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149  
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Super Ct

**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1943**

**No. 28**

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**THE BROTHERHOOD OF RAILROAD TRAINMEN,  
ENTERPRISE LODGE No. 27, ET AL, PETI-  
TIONERS,**

**vs.**

**TOLEDO, PEORIA & WESTERN RAILROAD**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SEVENTH CIRCUIT**

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**PETITION FOR CERTIORARI FILED MARCH 23, 1943.**

**CERTIORARI GRANTED APRIL 19, 1943.**

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VOL. I pp. 1 to 320.

TRANSCRIPT OF RECORD

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IN THE

Supreme Court of the United States

October Term, A. D. 1902.

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No.

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THE BROTHERHOOD OF RAILROAD TRAINMEN,  
ENTERPRISE LODGE NO. 27, et al.,

Plaintiffs,

vs.

TOLEDO, PEORIA & WESTERN RAILROAD,

Defendant.

---

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SEVENTH CIRCUIT.

---



IN THE

**Supreme Court of the United States**

OCTOBER TERM, A. D. 1942.

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No.

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THE BROTHERHOOD OF RAILROAD TRAINMEN,  
ENTERPRISE LODGE NO. 27, ET AL.,

*Petitioners,*

*vs.*

TOLEDO, PEORIA & WESTERN RAILROAD,

*Respondent.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SEVENTH CIRCUIT.

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TRANSCRIPT OF RECORD

**In the  
United States Circuit Court of Appeals  
For the Southern District**

**No. 7951**

**TOLEDO, PEORIA & WESTERN RAILROAD,**  
*Plaintiff-Appellee,*

*vs.*

**THE BROTHERHOOD OF RAILROAD TRAINMEN,  
ENTERPRISE LODGE NO. 27, ET AL.,**  
*Defendants-Appellants.*

U.S.C.A.-7  
FILED

JUL 3 - 1942

KENNETH J. CARRICK

CLERK

Appeal from the District Court of the United States for  
the Southern District of Illinois, Northern Division.

TRANSCRIPT OF RECORD FILED MARCH 6, 1942.

DOCKETED MARCH 6, 1942.

PRINTED RECORD.



In the  
**United States Circuit Court of Appeals**  
**For the Seventh Circuit**

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No. 7951

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TOLEDO, PEORIA & WESTERN RAILROAD,  
*Plaintiff-Appellee,*

*vs.*

THE BROTHERHOOD OF RAILROAD TRAINMEN,  
ENTERPRISE LODGE NO. 27, ET AL.,  
*Defendants-Appellants.*

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Appeal from the District Court of the United States for  
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3      Pleas in the District Court of the United States of      Placita.  
America, within and for the Northern Division of the  
Southern District of Illinois, held in the city of Peoria,  
in said Division and District, before the Honorable J.  
Leroy Adair, one of the Judges of said Court, on Monday,  
the 20th day of October, in the year of our Lord One Thou-  
sand Nine Hundred Forty-nine, and of the Independ-  
ence of the United States of America, the one hundred and  
sixty-sixth.

Present:

J. Leroy Adair, United States District Judge.

Paul E. Ruppel, United States Marshal.

Howard L. Doyle, United States Attorney.

G. W. Schwaner, Clerk, United States District  
Court.

Attest:

G. W. Schwaner, Clerk.

Filed 4 IN THE DISTRICT COURT OF THE UNITED STATES  
Jan. 3,  
1942.

For the Southern District of Illinois,

Northern Division.

Toledo, Peoria & Western Railroad,  
vs.

The Brotherhood of Railroad Trainmen,  
Enterprise Lodge, No. 27, F. W. Coyle,  
Vice President of Brotherhood of Rail-  
road Trainmen, Brotherhood of Loco-  
motive Firemen and Enginemen Robert  
Mason Lodge No. 926, W. C. Keiser,  
Vice President of Brotherhood of Loco-  
motive Firemen and Enginemen, W. J.  
Christoff, J. J. Gimming, Garland F.  
Brown, W. L. Brown, C. S. Gabbert,  
Hustler Wilson, Carl Roskamp, George  
Kneisley, Verd Kirk, H. J. Siebenthal,  
J. L. Feuger, Herman Reiman, G. L.  
Underwood, A. R. Overacker, H. E.  
Cole, H. O. Todd, Walter McMullen, W.  
E. Causey, Walter Kohtz, C. L. Brown,  
H. J. Dilley, O. W. Kirk, C. H. Kirk,  
Clinton Stetler, K. A. Feldt, Frank W.  
Lucas, Leo Totten, Delmar Newdigate  
and Arthur Brewster.

Civil Action,  
No. P-149.

Be it remembered, that heretofore, to-wit: on the 3rd day of January, in the year of our Lord One Thousand Nine Hundred Forty-two, that being one of the days of the October, A. D. 1941 Term of the District Court of the United States for the Northern Division of the Southern District of Illinois, there was filed in the office of the clerk of the said court a certain Complaint, which said Complaint was and is in the words and figures following, to-wit:

5 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—P-149) \* \*

6 To the Honorable Judges of the District Court of the  
United States for the Southern District of Illinois,  
Northern Division:

COMPLAINT.

Now comes Toledo, Peoria & Western Railroad, plaintiff,  
by its undersigned attorneys, and files its complaint against  
the Brotherhood of Railroad Trainmen, Enterprise Lodge  
No. 27, F. W. Coyle, Vice President of Brotherhood of  
Railroad Trainmen, Brotherhood of Locomotive Firemen  
and Enginemen, Robert Mason Lodge 926, W. C. Keiser,  
Vice President of Brotherhood of Locomotive Firemen and  
Enginemen, and others, defendants hereinafter named, and  
for cause of action shows to the Court:

(1) The plaintiff, Toledo, Peoria & Western Railroad,  
is a corporation duly organized and existing under and by  
virtue of the laws of the State of Illinois, having its  
principal office in the City of Peoria, Illinois; for years  
past it has been and now is the owner of and is engaged in  
operating a railroad between Effner, Indiana and Keokuk,  
Iowa, through the State of Illinois, with a branch line ex-  
tending from LaHarpe in Hancock County, Illinois to  
Lomax in Henderson County, Illinois where it connects  
with The Atchison, Topeka and Santa Fe Railway Com-  
pany, and also a line of road extending from Hamilton,  
Illinois to Warsaw, Illinois; it has been and is now a com-  
mon carrier of freight by railroad within the State of  
Illinois, and into the States of Iowa and Indiana, and,  
in connection with other roads, is engaged in the business  
of transporting freight between points within the State  
of Illinois and between points in the State of Illinois and  
other states; that it has for many years last past and is now  
engaged in handling both intrastate and interstate traffic;  
that it has been and is now engaged in interstate commerce  
under the laws of the United States; that it is a railroad  
corporation engaged in the handling of both intrastate  
7 and interstate traffic as a common carrier subject  
to the provisions of an Act of Congress entitled "An  
Act to Regulate Commerce," and all Acts amendatory and  
supplementary thereto.



(2) Plaintiff has its principal office in the City of Peoria in the State of Illinois, and its line of railroad extends eastward from Peoria through the counties of Tazewell, Woodford, MacLean, Livingston, Ford and Iroquois to Effner, Indiana, and extends westward from Peoria through the counties of Peoria, Fulton, McDonough, Hancock and Henderson; and that it is and was at the times hereinafter mentioned and is now a common carrier of freight by railroad, subject to the provisions of the Acts of Congress known as "An Act to Regulate Commerce" and Acts amendatory and supplementary thereto, and the Transportation Act of 1920 as amended.

(3) Plaintiff is also a common carrier subject to the Railway Labor Act of the United States as amended, and it is also, as such common carrier, subject to and included within the words "war utilities" as defined by the Federal Statutes as amended, being Sections 101, 102, 103, 104 and 105 of Title 50 of the U. S. Code of the Act of Congress, April 20, 1918, Federal Statute, as amended November 30, 1940, Chapter 296, 54 Statute, 1220.

(4) Plaintiff, in connection with its business as common carrier and railroad has established and now maintains and operates a railroad extending from Effner, Indiana through the State of Illinois to Keokuk, Iowa, with various branches or spur lines connecting with other railroads, and has also established and now maintains and operates station facilities at various cities and villages located upon its line of road; it has also established and now maintains and operates large terminal facilities in the City of East Peoria, Illinois and adjacent territory, including terminal facilities, round house, machine shops, yards, turntable,

8 repair shops, blacksmith shops, and all other terminal facilities required for its use in handling its business as a common carrier engaged in interstate commerce, including the receiving, making up, dispatching and operation of its trains so engaged in interstate commerce; that for many years last past it has operated regular freight trains in interstate commerce; and that its engines and equipment are used regularly in interstate commerce, and, in many cases, the engines and equipment are operated between Peoria and points without the State of Illinois in regular service; that it has continued such operation, except as it has been prevented from such operation, as hereinafter stated, by the unlawful acts of the defendants or some one or more of them, unto the present time, and that

it expects to continue such operation to the extent of its ability except as it is interfered with and prevented from performing such services by the unlawful and unauthorized acts of the defendants or some one or more of them, as hereinafter stated.

(5) The Brotherhood of Railroad Trainmen, hereinafter referred to as BRT, defendant herein, in a voluntary labor organization and F. W. Coyle is its Vice President; defendant Brotherhood of Locomotive Firemen and Enginemen, hereinafter referred to as B. of L. F. & E., is a voluntary labor organization and W. C. Keiser is its Vice President; W. J. Christoff, J. J. Gimming, Garland F. Brown, W. L. Brown, C. S. Gabbert, Hustler Wilson, Carl Roskamp, George Kneisley, Verd Kirk, H. J. Sibenthal, J. L. Feuger, Herman Reiman, G. L. Underwood, A. R. Overacker, H. E. Cole, H. O. Todd, Walter McMullen, W. E. Causey, Walter Kohtz, C. L. Brown, H. J. Dilley, O. W. Kirk, C. H. Kirk, Clinton Stetler, K. A. Feldt, Frank W. Lucas, Leo Totten, Delmar Newdigate and Arthur Brewster are former employees of this plaintiff now on strike and are made parties defendant as such.

9. (6) Plaintiff shows to the Court that it had an investment in excess of \$5,500,000.00 as of December 31, 1940, which investment has been increased since that date, as shown by its general balance sheet as of that date; that the annual payroll of plaintiff for the year 1940 was in excess of \$1,000,000, and that the payroll of plaintiff for the twelve (12) months ending November 30, 1941 was in excess of \$1,080,400.00.

(7) That prior to the 4th of October 1940 plaintiff had no contract with either the Brotherhood of Railroad Trainmen or the Brotherhood of Locomotive Firemen and Enginemen, defendants herein, with reference to conductors, trainmen, yardmen, (foremen, helpers and switchtenders) or locomotive engineers or firemen, hostlers or hostler helpers working upon its road.

(8) That on October 4th and 5th, 1940 an election was held, under the provisions of the Railway Labor Act as amended and under the supervision of the National Mediation Board, among conductors, trainmen and yardmen (foremen, helpers and switchtenders) employed by plaintiff for the purpose of permitting said employees to designate their representatives; that the trainmen and yardmen employed by plaintiff at such election elected the Brotherhood of Railroad Trainmen to represent them, and

the vote of the conductors showed a tie vote as between the Brotherhood of Railroad Trainmen and the Association of Train Service Employees of Toledo, Peoria & Western Railroad; that Mediator Murray of the National Mediation Board notified plaintiff of the result of such election by letter dated October 5, 1940.

That under date of October 11, 1940 plaintiff notified the BRT of intended changes of rules and working conditions for brakemen and yardmen; that by letter dated October 17, 1940 and received by Plaintiff October 18, 1940 General Chairman Newdigate of BRT, and General Chairman Beeson for B. of L. F. & E. notified plaintiff of their intended changes in rates of pay, rules and working conditions.

10 (9) Under date of October 21, 1940 received October 24, 1940 the National Mediation Board notified plaintiff that the BRT had been certified as a representative of the trainmen and yardmen.

(10) On November 27th and 28th, 1940 a new election was held for conductors employed by plaintiff resulting in a notification from Mediator Murray of the National Mediation Board under date of November 28, 1940 that the BRT had been elected as representative of the conductors. Plaintiff received certification from the National Mediation Board certifying that the BRT was the representative of the conductors under date of December 6, 1940. Under date of December 17, 1940 plaintiff notified the BRT of intended change of rates of pay, rules and working conditions.

(11) An election was held October 5th to 7th, 1940 by the firemen, hostlers and hostler helpers resulting in the selection of the BofLF&E, of which said selection plaintiff was notified by Mediator Murray under date of October 7, 1940. Under date of October 11, 1940 plaintiff notified the BofLF&E of intended change of rates of pay, rules and working conditions for firemen, hostlers and hostler helpers. Under date of October 17, 1940 Messrs. Newdigate and Beeson representing said BRT and BofLF&E notified plaintiff of intended changes for firemen, hostlers and hostler helpers; under date of October 21, 1940 the National Mediation Board certified that the BofLF&E was the representative of the firemen, hostlers and hostler helpers on plaintiff's road.

(12) Under date of October 10th and 11, 1940 an elec-

tion was held by the engineers employed by plaintiff and notice was received from Mediator Murray under date of October 11, 1940 that the BofLF&E had been elected as representative of the engineers. Under date of October 14, 1940 plaintiff notified the BofLF&E of intended change of rates of pay, rules and working conditions for the 11 engineers, and under date of October 17, 1940 Messrs. Newdigate and Beeson notified plaintiff of intended change in rates of pay, rules and working conditions to apply to engineers. A certification from the National Mediation Board dated October 21, 1940 and received October 24 1940 by plaintiff certified that the BofLF&E was elected to represent the engineers employed by plaintiff.

(13) That under date of November 18, 1940 the said F. W. Coyle, Vice President of BRT, and C. H. Keenan, Vice President of BofLF&E served upon plaintiff their proposed schedules of rates of pay, rules and working conditions, which said proposals were discussed by representatives of plaintiff with the representatives of said Brotherhoods; that by agreement the conferences were continued from time to time until December 17, 1940 at which time plaintiff served on said representatives of said BRT its proposed rates of pay, rules and working conditions for conductors and brakemen, which said schedule was discussed with said representatives and the conference was then continued by agreement to January 7, 1941 at which conference plaintiff served its proposed rates of pay, rules and working conditions applying to engineers, and firemen upon the representative of said BofLF&E. Conferences were held with reference to said proposals on January 7th and January 8th, 1941, on which latter date the representatives of said Brotherhoods advised plaintiff that they would not consider the proposals of plaintiff and plaintiff advised said Brotherhoods that their proposals could not be accepted as presented; said representatives of said Brotherhoods at said time advised said plaintiff that they would not make any changes in their proposals and that they would invoke the services of the National Mediation Board which was later done by said Brotherhoods.

(14) Under date of January 14, 1941, said National Mediation Board notified plaintiff that the BRT and BofLF&E had invoked the services of said Board.

and invited plaintiff to furnish said Board with such information as it desired to furnish.

(15) Under date of March 17, 1941 Mediator Murray of the National Mediation Board came to Peoria and conferences were had with A. B. Miller, Vice President of the BofLF&E and also B. W. Fern Deputy President of the BRT, and John F. Murray, Mediator, which conferences were held continuously until April 15, 1941, except for the week of March 24, 1941 to March 31, 1941. On April 15, 1941 plaintiff asked that Mediation be suspended for thirty (30) days to enable plaintiff to prepare new proposals following which the Mediation Board suspended mediation indefinitely. Under date of May 14, 1941 plaintiff wrote National Mediation Board that its new proposals were ready and that it wished to proceed with mediation; under date of May 17, 1941 the Secretary of said National Mediation Board advised that the Mediator was not available; under date of June 5, 1941 plaintiff again requested said Board to resume mediation and received the reply that Mediator was not available; under date of July 3, 1941 plaintiff again requested resumption of mediation and received a reply from said Board that Mediator was not available. Under date of September 8, 1941 Mediator Murray returned to Peoria and Mediation was resumed with F. W. Coyle, Vice President of BRT, and C. W. Keiser, Vice President of BofLF&E, before Mediator Murray; conferences continued until October 16, 1941 when the same were recessed to permit plaintiff to prepare new proposals. Under date of November 3, 1941 mediation was resumed by Mediator Murray and the representatives of said Brotherhoods and plaintiff and said new proposals were discussed. Under date of November 6, 1941 it became evident that the Brotherhoods and plaintiff could not get together and plaintiff requested the Brotherhoods to suggest rates of pay for which they would accept plaintiff's proposals of rules and working conditions but said Brotherhoods refused.

13. (16) Under date of November 7, 1941 Mediator Murray handed to the representatives of said Brotherhoods and plaintiff arbitration proposals, said proposals being submitted at a joint conference, which said proposals for arbitration were declined by said Brotherhoods and plaintiff. Under date of November 17, 1941 plaintiff wrote said National Mediation Board declining arbitra-



tion and suggesting the appointment of an impartial commission to investigate. Under date of November 21, 1941 said National Mediation Board by joint letter to Superintendent Best of Plaintiff and F. W. Coyle, Vice President of BRT in case A903, and by joint letter to H. H. Best, Superintendent of plaintiff, and W. C. Keiser, Vice President of B of LF&E, (case A 904) advised that said Brotherhoods and plaintiff had both declined in writing to arbitrate as requested by Mediator Murray under date of November 7, 1941, and calling attention to Section 5, 1st (b) of the Railway Labor Act as amended, and served notice upon both Brotherhoods and plaintiff that its services, except as provided in Section 5, 3rd, and of Section 10 of the Railway Labor Act had on said date November 21, 1941, been terminated under the Railway Labor Act, copies of which said joint letters are hereto attached and made a part hereof and marked Exhibits "A" and "B" respectively.

(17) Plaintiff further shows to the Court that as soon as plaintiff was notified by said Mediator Murray that the B of LF&E and BRT had been designated as the representatives of said employees on plaintiff's road that plaintiff at once recognized said Brotherhoods as the representatives of said men for the purpose of negotiating with reference to rates of pay, rules and working conditions as required by the Railway Labor Act and has continuously since that time so recognized said Brotherhoods as such representatives.

(18) Plaintiff further shows to the Court that it has in good faith at all times exerted and used every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions and to settle all disputes in order to avoid any interruption of interstate commerce growing out of the dispute between plaintiff and employees as required by said Railway Labor Act, and that it has in good faith at all times since the designation of said Brotherhoods as the representatives of its said employees endeavored to reach an agreement with reference to rates of pay, rules and working conditions applying to its said employees, but that notwithstanding all efforts on the part of the plaintiff in good faith to reach and maintain agreements with reference to rates of pay, rules and working conditions with said Brotherhoods so representing said employees it has

been unable to reach agreements which are satisfactory to said representatives and plaintiff.

(19) Plaintiff further shows to the Court that since being notified by said National Mediation Board of the termination of its services as mediator, as hereinabove stated, plaintiff was and is willing to attempt to reach agreements covering rates of pay, rules and working conditions which are fair both to its employees and itself; that it has since the notification of the termination of the services of said National Mediation Board made repeated efforts to reach agreements which are satisfactory to said Brotherhoods and its employees but has been unable to secure such agreements.

(20) Plaintiff further shows that it has in good faith complied with all of the provisions of the Railway Labor Act in endeavoring to reach an agreement with the Brotherhoods and its employees.

(21) That thereafter and some time prior to December 8, 1941 plaintiff was advised that the said Brotherhood 15 of Railroad Trainmen by F. W. Coyle, its vice president, and local representatives of said Brotherhood, and Brotherhood of Locomotive Firemen and Enginemen by W. C. Keiser, its Vice President, and local representatives of said brotherhood, caused to be taken a strike ballot or vote of classes of employees of plaintiff represented by said Brotherhoods; that under date of December 6, 1941 H. H. Best, Superintendent of plaintiff, addressed a joint letter to the said W. C. Keiser, Vice President of B. of L. & E., and F. W. Coyle, Vice President of BRT, advising that plaintiff understood that a strike vote had been taken by said employees, and requesting that at least fifteen (15) days notice of the date and hour on which said strike would become effective should be given for the purpose of protecting the shippers of interstate commerce and vital industry and communities dependent upon plaintiff for transportation service; that on said date, but after the writing of said letter, plaintiff received a wire from the Secretary of the National Mediation Board notifying plaintiff that said Board had been advised that enginemen, trainmen and yard service employees of plaintiff would be withdrawn from service on Tuesday, December 9, 1941 at 11 o'clock a. m., which said message was received later in the afternoon of Saturday, December 6, 1941; that no word was received from the said Brotherhoods as to the

calling of said strike until near twelve o'clock noon on December 8, 1941, Monday, that a strike would be called effective at eleven o'clock a. m. on Tuesday, December 9, 1941, which said notice was received less than twenty-four (24) hours from the time fixed for said employees to leave the service of plaintiff. That thereafter at about eleven o'clock a. m. on Tuesday, December 9, 1941, a letter was received by plaintiff's superintendent from the said Coyle and Keiser advising that said strike called for eleven o'clock a. m. on Tuesday, December 9, 1941, had been postponed at the request of the Mediation Board.

(22) That thereafter conferences were held between the representatives of said Brotherhoods and the National Mediation Board and representatives of plaintiff, and further conferences were held at Peoria between the representatives of said Brotherhoods and representatives of plaintiff in an endeavor to reach an agreement concerning rates of pay, rules and working conditions affecting the class of employees represented by said Brotherhoods; that plaintiff in good faith used every endeavor to reach agreements with said Brotherhoods but that all offers submitted by plaintiff were rejected by the said Brotherhoods; that thereafter by letter dated December 20, 1941 mailed December 21, 1941, plaintiff advised said Brotherhoods and its employees that its schedule of proposed rates of pay, rules and working conditions submitted to said Brotherhoods would become effective at 12:01 A. M. on December 29, 1941, which said proposals as to rates of pay so submitted by plaintiffs to said Brotherhoods on November 3, 1941 were increased 76¢ per day to apply until December 31, 1942.

(23) That thereafter under date of December 28, 1941 the said W. C. Keiser and F. W. Coyle, Vice President of said Brotherhoods, addressed a letter to the plaintiff's superintendent, which was received December 28, 1941 at 10:15 A. M. advising that employees ~~of~~ the classes represented by them would be withdrawn from service at 6:00 P. M. on Sunday, December 28, 1941; that following said letter practically all members of the classes of employees represented by said Brotherhoods did withdraw from the service of plaintiff at 6:00 P. M. on Sunday, December 28, 1941; that said employees have since said time refused to return to their respective positions with plaintiff.

(24) Plaintiff further shows to the Court that prior to the calling of said strike by said Brotherhoods that plaintiff was engaged in the handling of interstate traffic between the State of Illinois and other states and through the State of Illinois from and between other states, which said traffic so handled by plaintiff consisted of war material, including arms, armaments, ammunition, live-  
17 stock, clothing, food, food stuffs, fuel supplies, munitions, and other articles and ingredients thereof intended for, adapted to, or suitable for the use of the United States and Associate Nations in connection with the conduct of war; that the acts of the defendants, as hereinafter set forth, following the time the strike became effective, have interferred with and now interfere with and prevent plaintiff from continuing as such common carrier in the transportation of such articles.

(25) Plaintiff further shows to the Court that as the owner of said railroad and operator of such system of transportation, as hereinabove stated, it is included in the classification of "war utilities" as defined in Section 101 of Title 50 of the United States Code as amended November 30, 1940; and that the material and freight so transported by plaintiff prior to the calling of said strike included the articles hereinabove mentioned; and that plaintiff by reason of the unlawful and unauthorized acts of the defendants has been prevented and is now being prevented from the transportation of such articles in interstate commerce and in violation of the provisions of the Constitution and Laws of the United States.

(26) Plaintiff shows to the Court that it verily believes, on information received by it which it believes to be reliable, that the defendants have been acting and are now acting, cooperating, confederating, combining and conspiring and arranging with each other to interfere with, hinder, obstruct and stop the business of plaintiff, its agents,  
servants and employees in the conduct and operation  
18 of its business of a common carrier in the transportation of interstate commerce; that by reason of the threats, intimidations, force, and violence of the representatives of said Brotherhoods, officers and members, many of the former employees of Plaintiff have been compelled to leave their place of employment and have been prevented from returning to their employment because of the fear of bodily harm and injury; that persons desiring

to enter the employ of the plaintiff and work in the transportation of interstate commerce have been and are being prevented from entering in such employment and work by reason of the unlawful acts of the defendants or someone or more of them, and by reasons of the threats, intimidations, force and violence of the members or representatives of said Brotherhoods and former employes of this plaintiff now on strike.

(27) Plaintiff further shows to the Court that said striking employees, notwithstanding the fact that they have ceased their employment and have refused to return to their work after having been notified by plaintiff to return to work, have, in many instances, come upon the premises of the plaintiff, on roadways leading to said premises and in the vicinity of said premises in great numbers and by their threats, abusive language, intimidations, threats and show of violence have caused other employees of the plaintiff to cease their employment and remain away from their work by reason of their fear of violence; and have prevented other persons desiring to enter the employ of the plaintiff from doing so by their threats of violence, abusive language and intimidations.

(28) That said striking employees and others acting with, cooperating, confederating, combining and conspiring with each other and, in many instances, congregated in the vicinity of the plaintiff's property at various entrances thereto and have established the practice commonly known as picketing; that is, assembling or causing to be assembled numbers of men in sympathy with said strike at various points of ingress and egress to the freight house, yards, roundhouses, and other premises of the plaintiff or in proximity with plaintiff's property where its present employes are required to work; and that said pickets, in many instances, are armed with clubs and other implements and that said pickets so armed with clubs are stopping persons desiring to enter upon plaintiff's premises and desiring to transact business with the plaintiff and, in some instances, officers of the plaintiff have been stopped by said pickets, some of whom were armed with clubs and other implements displayed in a violent and threatening manner; and that by threats of danger and threats of violence of many kinds and by abusive language are seeking to prevent and, in many instances, are preventing employees of plaintiff from continuing their work or other persons from becoming employees of plaintiff.



(29) Plaintiff further shows to the Court that by reason of the threats, intimidations, abusive language, acts of violence and threats of violence by said strike employees or someone or more of them who are confederating and conspiring with them, that the employees of plaintiff by reason of their fear of violence to themselves and to their families or property have been and are being prevented from working for the plaintiff; that by reason of the acts of the defendants or someone or more of them cooperating, confederating, combining, conspiring and arranging with each other and with their sympathizers to interfere with, hinder, obstruct and stop the business of the plaintiff, the plaintiff has been and is now hindered and obstructed from the prosecution of its business as a common carrier of interstate commerce, and in the proper care and protection of its business as a common carrier in interstate commerce; that plaintiff has been and is now prevented from properly caring for and rendering service to the various patrons of its road and in the prosecution of its business as a common carrier in interstate commerce by reason of the unlawful and unauthorized acts of the defendants or some of them.

(30) Plaintiff further shows to the Court that in many instances the employees of the plaintiff have been stopped by said striking employees of plaintiff or some of them while on their way to or from work, and have been threatened with bodily injury to themselves, their families, or injury to their property, if they do not cease their employ by the plaintiff; that said employees have been subjected to profane, scurrilous and vulgar attacks by the language of said striking employees; and that many of the pickets at the entrance of the plaintiff's property are armed with clubs and other implements of violence which have been displayed by many of said pickets in a threatening and illegal manner.

(31) Upon information and belief which information plaintiff believes to be true, plaintiff shows to the Court that many of its employees have been called by telephone by persons in sympathy with said striking employees, or by striking employees, and have been warned not to return to work for the plaintiff under threat of bodily violence to themselves or their families; that in some instances the wives of employees have been called by telephone and threats of injury made to themselves or said employees in



case said employees should not cease their employment with plaintiff.

(32) Plaintiff further represents and shows to the Court that by reason of the acts of said striking employees and those cooperating and confederating with them as aforesaid, it has been and is prevented from properly carrying on its business as a common carrier in interstate commerce, and that it fears immediate and irreparable injury, loss or damage will result to it by reason of said striking employees and other persons affiliated, acting, combining, 21 agreeing or arranging with them by reason of threats of violence and acts of violence, unless said striking employees and those affiliated, acting or combining or conspiring with them are enjoined by this Honorable Court from the continuance of such unlawful acts, threats and conspiracies.

(33) Plaintiff further shows to the Court that its train service in the handling of interstate commerce has been interfered with and prevented by reason of the unlawful acts of the defendants and their acts of violence and threats of violence, and the plaintiff verily believes that there is imminent and immediate danger of the train service of plaintiff being interfered with, interrupted and delayed, and of further interruption, interference and delay with interstate commerce; that in order to continue the uninterrupted passage of trains carrying interstate commerce that it is necessary for the plaintiff to have the necessary employees to handle said trains, such as engineers, firemen, conductors, brakemen, switchmen and helpers, and that it fears said service in interstate commerce will be further interrupted and stopped unless said strike employees and those affiliated, acting, combining and conspiring with them shall be enjoined from interfering with the work and service of plaintiff and employees desiring to work, or those desiring to enter in plaintiff's employ.

22 (34) Plaintiff further shows upon information and belief, which it believes to be true, that upon the calling of said strike by said brotherhoods and its representatives as hereinbefore set forth, the representatives of said brotherhoods announced that they would establish picket lines at the points of entrance to the property of the plaintiff and would use all means necessary to prevent the operation of plaintiff's road; that following the calling of said strike and the announcement of the intention of said brotherhoods and those combining, confederating and co-

operating with them, picket lines were established and have since been maintained at the various entrances to the property of plaintiff; that at the entrance leading to the shops and offices of plaintiff leading from the public highway known as U. S. Route 24, in East Peoria, picket lines have been established and are now maintained; that from fifteen to twenty men, striking employees and others co-operating and confederating with them, have been stationed at said point and that many of the said men have been armed and are armed with clubs and other instruments of violence; that said striking employees in said picket line and those confederating and conspiring with them at said point have stopped various persons desiring to enter the said lane or to leave said lane in going from the premises of the plaintiff, and that various acts of violence have occurred at said point, and that various persons entering or leaving said premises have been stopped and threatened with violence if they do not cease working for the plaintiff; that officers of plaintiff have been stopped at said point by said striking employees.

(35) Plaintiff further shows that on the night of December 30, 1941, one Zeno F. Merrill, an employee of plaintiff who has continued to work as an engineer for plaintiff, had completed his work for the day at about five-thirty p. m. and was leaving the premises of the plaintiff for the purpose of returning to his home, in company with one Herschel Thompson; that the said Merrill was in the rear seat of the automobile being driven by the said  
23 Herschel Thompson and that when the automobile reached the end of the lane leading to the hard road, U. S. Route 24, the striking employees and pickets interfered with the passage of said car and as a result thereof said car was stopped; that after said car was stopped various members of the picket force came to the car in which the said Merrill was riding and forced him to get out of the car and thereupon assaulted the said Merrill, severely injuring him; that he was taken out of said car and beaten by defendants W. E. Causey, Walter McMullen, Walter Kohtz, H. O. Todd, Carl Roskamp, and C. L. Brown.

Plaintiff attaches hereto and makes a part of this complaint the sworn statement of said Zeno F. Merrill with reference to said assault, the same being marked as Plaintiff's Exhibit "C".

(36) Plaintiff further shows to the court that at the entrance to the freight house of plaintiff leading from West

Washington Street in the City of East Peoria, a picket line was established upon the calling of said strike, by said defendants or some one or more of them, for the purpose of preventing ingress and egress to and from said freight house; that some of said pickets were armed with clubs or other implements of violence, which said clubs and other implements were used in a threatening manner to prevent ingress and egress to and from said freight house; that at times as many as eight to ten pickets were located at the entrance to said freight house, and that pickets have been stationed at said point continuously from the time of the calling of said strike until the evening of Wednesday, December 31, 1941.

(37) Plaintiff further shows to the Court that said defendants or some of them or those cooperating and confederating with them, have been stationed as pickets near what is known as the Lake Erie crossing of the T. P. & W. Railroad and the Nickel Plate Railroad in East Peoria, and at various other points along the line of railroad of plaintiff, and that said pickets have by acts of violence and threats of violence attempted to prevent the passage of trains operated by plaintiff in handling interstate commerce.

(38) Plaintiff further shows to the court that the following acts of violence on the part of said defendants or some one or more of them or other persons confederating and cooperating with them and acting as pickets to prevent the operation of plaintiff's railroad:

(a) That on December 29, 1941, the O'Neill Transfer & Storage Co. attempted to send one of its trucks to the freight house of plaintiff in East Peoria for the purpose of receiving or delivering freight to plaintiff; that the driver of said truck was stopped at the entrance of the lane leading to the freight house and turned back by the pickets then stationed at said entrance, and the driver of said truck was refused permission to enter said driveway and to go to the freight house of plaintiff. That on said December 29, 1941 a truck of the Haley Transfer Company was also refused permission to enter said driveway leading to the freight house of plaintiff in East Peoria, and was prevented by the acts of the defendants or some one or more of them or by persons cooperating and confederating with them from reaching the freight house of the plaintiff.

(b) That on December 29, 1941, Don McClaskey, a driver for the Transit Icing Company, which plant is lo-

cated upon the premises of plaintiff, was refused permission to enter said ice plant by said pickets and turned back upon three different occasions.

(c) That on December 29, 1931, the shop truck of plaintiff was attempting to enter this driveway leading from Washington Street in East Peoria to plaintiff's freight house for the purpose of delivering or receiving materials necessary for the operation of plaintiff's railroad, and that said truck was turned back and refused admittance to the entrance to said freight house.

That on December 29, 1941, the foreman of the International Harvester Company was refused admission to  
25 the entrance to the freight house of plaintiff in East Peoria by said strikers and those forming the picket line at the entrance to said freight house.

(d) That on December 29, 1941, one James Lantz, a fireman in the employ of plaintiff, approached the entrance to the lane leading to plaintiff's property from U. S. Route 24, for the purpose of going to work; that the car driven by the said James Lantz was stopped by said pickets, and said pickets threatened to overturn his car, the said pickets threatening violence and injury to the said James Lantz; that the car of the said James Lantz was almost overturned by said pickets, but notwithstanding that fact the said James Lantz proceeded on to his work as fireman for plaintiff.

(e) That on December 29, 1941, the Peoria & Pekin Union Railway Company attempted to make delivery of a cut of cars from its yards in East Peoria to the tracks of plaintiff; that some of the pickets and striking employees of plaintiff or those cooperating with them, stopped said cut of cars so being operated by the Peoria & Pekin Union Railway Company in the vicinity of Herschel Street and refused permission for said cut of cars to continue, and that as a result of the acts of said pickets and striking employees, the Peoria & Pekin Union Railway Company employees returned said cut of cars to the Peoria & Pekin Union Railway Company's yards, and no delivery was made of said cut of cars by reason of the acts of the pickets and striking employees.

(f) That on December 29, 1941, Chief Engineer W. Y. Ware and Signal Supervisor Hultgren, employees of plaintiff, while driving over the lane leading from the plaintiff's yards to U. S. Route 24, observed that there were tacks and other articles which could cause a puncture to automobile

tires strewn over a portion of said lane; that said employees continued to U. S. Route 24 where the pickets were assembled and there examined the tires of their automobile but did not find any tacks in the tires of their automobile; that they continued to the west end of plaintiff's

26 East Peoria yards a distance of about three-quarters of a mile, and then returned to the lane leading to plaintiff's yards; that they observed that roofing nails had been thrown upon said driveway and that it was necessary to sweep said nails from said driveway before attempting to pass over the same to the yards of plaintiff. Plaintiff verily believes that said roofing nails and other instruments which could cause a puncture to automobile tires had been thrown upon said lane by some one or more of the pickets stationed at the entrance to said lane at its juncture with U. S. Route 24. Plaintiff further avers upon information and belief, which information it believes to be true, that one of the employees of plaintiff observed some one or more of the pickets throwing nails and tacks upon said driveway on December 30, 1941.

(g) That on December 30, 1941, the L. C. L. truck of plaintiff which carries L. C. L. freight between Peoria, Illinois, and Effner, some of which L. C. L. freight constituted interstate commerce, was stopped as it left the lane leading from the freight house of plaintiff in East Peoria, and the driver was informed that he would not be permitted to re-enter the lane leading to the freight house of plaintiff upon his return trip, and said driver was threatened that if he continued to drive said truck, bodily injury to him would result.

(h) That on December 30, 1941, the Chief Special Agent, Kipling, was stopped at the entrance to the lane leading to the yards of plaintiff as he was on his way to work, and was threatened by one or more of the pickets that if he would get out of the car he would be struck over the head with a lantern; that the said Kipling got out of his car but that no injury occurred to him and he was permitted to continue on to his work.

(i) Plaintiff is informed and believes and upon such information states that on the morning of December 30, 1941, the wife of Zeno F. Merrill was called by tele-  
27 phone at her home and advised that her husband had been seriously injured and was in the Proctor Hospital; that said telephone call to the wife of said Merrill was long prior to the time of his injury on the evening of



December 30, 1941; and plaintiff verily believes that said telephone call was made by some one or more of the striking employees or those confederating or cooperating with them, for the purpose of influencing said Mrs. Merrill to have her husband cease working for plaintiff.

(j) Plaintiff further shows to the Court that on December 29, 1941, the high rail on a curve in the plaintiff's track on New Philadelphia hill, in the County of McDonough, was found to have been greased, and that when the engine and train of plaintiff struck said greased rail the engine and train were caused to slip and slide, but that fortunately it did not become derailed; that the greasing of said high rail of said curve was likely to cause a derailment of any train passing over the same. Plaintiff shows to the Court that it verily believes that the greasing of said rail was the act and deed of some one or more of the strikers or those cooperating and confederating with them.

(k) That on December 30, 1941, a truck of the Cohen Furniture Company, of Peoria, seeking to deliver goods to the yard of plaintiff, was turned back by the pickets at the entrance to the lane leading from Route U. S. 24; that on said date a truck of the Illinois Bell Telephone Company was driven into said lane leading to the yards of plaintiff, and workmen of said Telephone Company were proceeding to set a telephone pole upon the property of plaintiff for the purpose of installing additional telephone service for plaintiff; that the pickets at the entrance to said lane caused the employees of the Telephone Company to cease work there and to refuse to continue the work of installing said telephone pole and additional telephone service for plaintiff.

(l) That on December 30, 1941, and subsequent thereto, plaintiff has discovered switches unlocked and lamps  
28 broken at Sheldon, Webster, Leonard, Forrest, LaHogue and Chatsworth, such switches having been turned so as to cause a train to leave the main track, and by reason of the signals having been destroyed or removed, the operators of said trains would be unable to discover or ascertain that such switches had been thrown; that plaintiff, through its section men or patrolmen, discovered the throwing of said switches and destruction of signals prior to the arrival of any trains which contained interstate commerce; that the said switches at Forrest and LaHogue were left partially open so that a train operating over the same would have been derailed.



(m) That on December 30, 1941, a train of the plaintiff passing over the Nickel Plate crossing, returning to East Peoria yard of plaintiff, was stoned by various pickets or those cooperating and confederating with them; that on the same date a train of the plaintiff moving in a westerly direction was stoned near the west end of the Illinois River bridge, resulting in damage to the equipment of plaintiff.

(n) That on December 31, 1941, the truck of the Railway Express Agency which was going to the East Peoria shops for the purpose of delivering express to the East Peoria yards of plaintiff, was stopped by the pickets at the entrance to the lane leading to the yards of plaintiff, and by reason of the acts of said defendants the driver of said truck refused to go through the picket lines. That also on December 31, 1941, a truck which was going to the yards of plaintiff for the purpose of delivering gasoline for motor cars was stopped by said pickets and turned back. That on said date, round house employee Harrison, who was on his way to the yards of plaintiff, had the windows of his car broken as he passed the picket line at the entrance to the lane leading from U. S. Route 24.

(o) That on December 31, 1941, one telegraph line of plaintiff's system near mile post 4-26 near Webster, Illinois, was cut and the ends wrapped around two other wires,

thereby preventing the proper operation of the telegraph system of plaintiff in the operation of its railroad. Plaintiff verily believes that the cutting of its telegraph wire was the result of the acts of said striking employees or those associating and confederating with them.

(p) That on the afternoon of December 31, 1941, at about two-thirty o'clock, when one of the trains of plaintiff was proceeding westwardly from Peoria, hauling interstate and other freight, said train was attacked near Hollis, Illinois, by W. L. Brown, G. F. Brown, J. J. Grimming, G. Underwood, H. Reiman, W. J. Christoff, J. L. Fueger and H. J. Dilley, who threw stones and other missiles against said train, breaking all of the glass and window frames from the caboose of said train, and also breaking the glass headlight of the engine. Employee Carnation had his lip cut, and employee Ward was struck in the stomach which knocked the wind out of him; that said striking employees above named used rocks, brickbats and other articles which they threw against the train; that said striking employees continued to follow said train

from Hollis, Illinois, to Canton, Illinois, attacking said train at various points along the route, resulting in further damage to the engine and caboose; that the employees of plaintiff in charge of said train picked up various rocks and brick-bats which had been thrown by said striking employees and the same are now in the possession of the plaintiff, ready to be produced in Court; that one or two of said stones and brick-bats have blood upon them as a result of their striking employees of the plaintiff. That Milwaukee Car No. 708205, contained in said train, covered by way-bill 14965, shipped December 24, 1941, contained a load of salt from the Morton Salt Company, Manistee, Michigan, consigned to the Farmers Cooperative Grain & Supply Company, at Canton, Illinois; that said train also contained Illinois Central Car No. 10138, way bill No. 20002, shipped December 26, 1941, containing feed, from the Raven Sales Company, Council Bluffs, Iowa, to Glenn Lovell, Bushnell, Illinois, routed Illinois Central to Peoria and T. P. & W. west; that both of said cars con-  
30 tained shipments moving in interstate commerce, and that the movement of said cars containing said interstate commerce was interfered with and delayed by reason of the wrongful, unlawful and unauthorized acts of said defendants hereinabove named.

(q) That on December 31, 1941, knuckles and pins were removed from cars on plaintiff's road at Chatsworth and at LaHogue; that on said date pins had been taken from both ends of a grain car located at the elevator at LaHogue; that knuckles and pins were also removed from cars on plaintiff's road at Crescent City; that on said date lenses in the switch lamps at the east end of Track Five at Leonard were broken; that on said date the headlight of Engine 43 was broken with a brick-bat at Hamilton, Illinois; that on said date the switch light at the east end of Track Three at Chatsworth was broken. Plaintiff verily believes that the foregoing acts set forth in this paragraph were committed by some one or more of the striking employees or by those confederating and cooperating with them.

(r) That on December 31, 1941, a switch engine of the plaintiff on its way from East Peoria to Peoria was stopped at the east end of the Illinois River bridge in the City of East Peoria, and said engine and crew were attacked with brick-bats and stones; that the headlight and windows of said engine were broken; that immediately following the

stoning and damaging of said engine, a number of the striking employees were observed congregated in the vicinity of said incident; that said cut of car being handled by said switch engine contained three cars which contained shipments of merchandise moving in interstate commerce; that as a result of the attack upon said switch engine the movement of said cars was delayed some twenty-five minutes; that said interstate cars in said cut at said time were P. R. R. car 567738, way-bill 50053, dated December 27, 1941; P. R. R. car 518602, way-bill 50052, dated December 27, 1941; and P. R. R. car 50404, way-bill 50054, dated December 27, 1941, all of said cars containing bottles consigned by the Ball Bros. Co. of Muncie, Indiana, to 31 Hiram Walker, Inc., Peoria, Illinois, routed P. R. R. to Effner, and T. P. & W. to Peoria; That each of said cars in this paragraph mentioned was offered by the plaintiff to the Rock Island Railroad for the purpose of transfer and delivery to Hiram Walker, Inc.; that by reason of the acts of violence and threats of violence on the part of the defendants and those cooperating and conspiring with them, the employees of the Rock Island Railroad, as the plaintiff is informed and believes, fear personal injury if they attempt to take possession of said cars and make delivery thereof, and that by reason thereof said cars have been standing on the interchange track in Peoria since December 31, 1941; that all of said cars have been delayed in their transportation of interstate commerce.

(s) That on December 31, 1941, one of the officers of plaintiff saw a car bearing license plates No. 6 32-609—Illinois—1941, drive up alongside of a T. P. & W. engine; that a woman leaned out of said car and shook a brake club as said engine was near the Illinois River Bridge in East Peoria, Illinois; that said car having license No. 6 32-609—Illinois—1941 is registered as belonging to J. L. Mack, a striking fireman of plaintiff, and was driven by said Mack.

(39) Plaintiff further shows that on December 29, 1941, at about 12:45 P. M., the general storekeeper of plaintiff at the East Peoria yard left said yard in East Peoria and took an open stake-body truck belonging to plaintiff and drove to the Illinois Furniture Company, in Peoria, for the purpose of picking up some mattresses which had been ordered by the plaintiff; that said employee then proceeded to the East Peoria freight house located just off of West Washington Street, in East Peoria, where he was to pick up some freight which had been consigned to the

store department at the yard; that when he arrived at the entrance to the freight house at about two o'clock P. M. he was stopped by some nine men, a few of whom were brandishing clubs; that of said nine men said employee recognized O. W. Kirk, C. H. Kirk, Clinton Stetler, John J. Gimming, and K. A. Feldt; that the said O. W. Kirk and

John J. Gimming were holding clubs over their  
32 shoulders; that said men were blocking the road leading to the freight house and caused said truck to stop;

that Clinton Stetler came up to the door of the truck and asked the driver where he was going, and when the driver stated that he was going to the freight house he was asked if he had material that was to be delivered to the freight house; that said employee informed the said Stetler that he had nothing to deliver but that he was going to pick up material that was consigned to the store department at the yard; that the said Stetler then talked to the rest of the men and came back and said that they would not permit the driver of the truck to proceed; that the supplies that said employee expected to pick up were shipments of interstate freight, consisting of three separate shipments, as follows: (1) six bundles rough castings, received from Johnstown, Pennsylvania, way-bill 797, dated December 23, 1941, shipped by Davis Brake Beam Company via Pennsylvania Railroad to Effner, and T. P. & W. to Peoria; (2) Six fibre boxes Packing Device Forms N O I B N Bronze, received at Boston, Massachusetts, way-bill 8059, dated December 16, 1941, shipped by Hunt Spiller Manufacturing Company, via New York Central Railroad, Wabash Railroad and T. P. & W.; (3) three bundles welding wire, received Davenport, Iowa, way-bill 5535, dated December 21, 1941, shipped by Air Reduction Sales Company via C. B. & Q. and T. P. & W.; that all of said shipments were shipments received in interstate commerce intended for the use of the plaintiff in the conduct of its business as a carrier of interstate commerce; and that the delivery of said shipments to plaintiff at its East Peoria yards was prevented by the action of said striking employees as aforesaid.

39. Plaintiff further shows to the Court that on January 2, 1942, at about 7:45 A. M., its employees operated an extra freight train, with locomotive, tender, and approximately twenty-five to thirty cars of freight and caboose, which they intended to operate from the yards to the plaintiff in East Peoria, Tazewell County, Illinois, in

33 a westerly direction to Keokuk, Iowa; that when said train reached a point in the City of Peoria commonly known as Hiram Walker crossing, at Edmund Street, two of the defendants herein named, to-wit, John J. Grimming and Arthur Brewster, were riding in an automobile which was being driven by said John J. Grimming; that the driver stopped said automobile near the train and in the presence of Harold E. Kipling, Chief Special Agent of plaintiff, the said John J. Grimming then and there said in a threatening manner to Harold E. Kipling the following: "You are not coming back off of the west end today; we are going to get all of the rest of them, too; none of them are coming back; they might go out, but they are not coming back; we have the stuff to get you with, too."

That after the said defendant John J. Grimming, in the presence of Arthur Brewster had concluded making said threatening statement as aforesaid, the said John J. Grimming and Arthur Brewster proceeded in a westerly direction on the public highway, parallel with the said railroad, until they reached a point near the plant of the Allied Mills, south of the Village of Bartonville in the County of Peoria, and there joined with a large number of other individuals, some of whom are defendants herein named; that said individuals were there gathered at or near the right-of-way of the plaintiff, being in the approximate number of twenty-five or thirty, and were armed with clubs, stones and other missiles, and with glass whiskey bottles filled with gasoline or benzine;

That among the persons gathered at the point aforesaid were two of the defendants, namely Frank W. Lucas and Leo Totten, who were former employees of the plaintiff; that when said locomotive drawing said freight train reached a point near where said men had gathered, the said Frank W. Lucas then and there threw a glass whiskey bottle containing gasoline or benzine into the cab of the engine, with the intention then and there to injure the engineer or fireman or other persons riding in the cab of said engine or with the intention of destroying or injuring the said locomotive; that at the same time one

34 of the other individuals in said group of men congregated as aforesaid, and with like intent, also threw a glass whiskey bottle filled with gasoline or benzine into the cab of said engine; that as a result of the throwing of said bottles into the said cab, the said gasoline or benzine became ignited and flames enveloped the interior of the



cab, and burned a portion of said cab, and injured the engineer who was then and there operating the said locomotive, and other employees of the plaintiff riding in said locomotive were also burned and injured as a result of said fire.

That immediately thereafter the said Frank W. Lucas who threw one of the said whiskey bottles into said cab, ran to an automobile which was then standing nearby with the engine running, headed in the direction of the City of Peoria, easterly, and in the possession of Leo Totten; said Lucas hurriedly got into said automobile, and the same was then driven rapidly by the said Leo Totten in the direction of the City of Peoria; that the said Frank W. Lucas and Leo Totten were later apprehended and arrested by the police officers of the City of Peoria.

That the facts and circumstances with reference to the attempt of Frank W. Lucas and Leo Totten to injure the employees of the plaintiff or to destroy its railroad property, are set out in more detail in the affidavit of Harold E. Kipling hereto attached and made a part hereof, and marked Exhibit "D."

35 (40) That the acts of the defendants, and those cooperating, confederating and conspiring with them, for the purpose of preventing plaintiff from continuing in the performance of its duty as a common carrier of interstate and foreign commerce are wrongful and unlawful and in violation of the laws of the United States relating to the transportation of freight in interstate and foreign commerce.

(41) That heretofore on to wit, the 30th day of December, 1941, plaintiff caused to be served upon the Mayor and Chief of Police of the City of East Peoria, and upon the Sheriff of the County of Tazewell and State of Illinois notice of said strike, and that the picket lines established by said strikers and those cooperating, confederating and conspiring with them had prevented and interfered with the entrance of trucks of Haley Transfer Company and O'Neil Transfer and Storage Company in reaching the freight house of the plaintiff, and that said pickets had further prevented and interfered with the various entrances of individuals upon plaintiff's property for the purpose of delivering and receiving merchandise at the freight house, and calling upon said law enforcing officers to take all necessary steps to protect the plaintiff and the shipping public against any interference with the free movement



of any person or persons to the freight house in East Peoria, whether by the picket line then established at the entrance of said freight house, or otherwise, and requested that such officers of the law as might be needed should be stationed at West Washington Street entrance of said freight house to preserve order and take such other steps as might be necessary to accomplish that result and to prevent possible violence; that subsequent to said notice, plaintiff has called upon the sheriff of the County of Tazewell and State of Illinois, to furnish protection to its men who desire to work, and for the protection of its employees from acts of violence and intimidation on the part of the defendants, or others cooperating, confederating and 36 conspiring with them, for the purpose of preventing the operation of plaintiff's railroad. That on the 2nd day of January, 1942, plaintiff requested by wire the sheriffs of the counties of Iroquois, Ford, Livingston, MacLean, Woodford, Fulton, McDonough, Hancock, Henderson, Tazewell and Peoria as well as the mayors of the various cities located in said counties for protection to plaintiff and its employees, and that request has also been made upon the sheriff of the county of Peoria and the state highway police for such protection.

That notwithstanding such request upon such law enforcing officers, the defendants cooperating and confederating and conspiring together with others are seeking by acts of violence and threats of acts of violence, intimidation and coercion to prevent the employees of the plaintiff who desire to return to work from returning to work, and to prevent others who are willing to work for the plaintiff and many of the employees and others from returning to work; that said law enforcing officers, either through their inability to prevent violence or their unwillingness to preserve law and order, have failed and are now failing to prevent disorder, violence and threats of violence by the defendants and those cooperating, confederating and conspiring with them against the plaintiff's employees and those desiring to work for plaintiff; and upon information and belief, which information plaintiff believes to be true, plaintiff alleges and charges that the said law enforcing officers of the various counties through which plaintiff's line of railroad runs are unable to prevent the acts of violence and threats of violence, intimidation and coercion on the part of the defendants and those cooperating, confederating and conspiring with them, as hereinabove and

hereinafter stated; that by reason of insufficient force of law enforcing officers in the various counties and cities that said law enforcing officers are unable to prevent violence and unlawful acts of violence on the part of the defendants and those cooperating, confederating and conspiring with them.

(42) Plaintiff shows to the court that since the calling of said strike it has employed various men to take the place of the strikers, who have refused to return to work, and that it is attempting to operate its railroad, notwithstanding the acts of violence and threats of violence on the part of the defendants and those cooperating, confederating and conspiring with them; that it has received application from many persons seeking employment, and that it desires to employ and put to work such additional employes as may be necessary to operate its railroad, and to fully comply with all of the requirements of shippers in both state and interstate commerce, and to prevent delay in the handling of state and interstate commerce; that by reason of the unlawful acts of the defendants and those cooperating, confederating and conspiring with them, plaintiff is unable to fully operate its road and handle without delay such state and interstate traffic; that it is necessary that its employees and those operating trains of the plaintiff receive full and complete protection in the performance of their duties as employees of the plaintiff in the handling of the state and interstate traffic.

(43) This complaint is of a civil nature and involves damages to plaintiff and its employees in an amount in excess of Three Thousand Dollars (\$3000.00) over and above interest and costs.

(44) That the complaint of plaintiff is based upon the Constitution and Laws of the United States, and that the jurisdiction of this Court is invoked on behalf of plaintiff because of the rights given it by the Constitution and the Laws of the United States.

(45) Plaintiff alleges that the unlawful acts of the defendants as hereinbefore stated have been threatened and will be committed unless restrained by this Honorable Court.

(46) That substantial and irreparable injury to plaintiff's property has been committed and will be committed unless restrained by this Honorable Court; that to each item of relief hereinafter prayed greater injury will be inflicted upon plaintiff by the denial of relief

than will be inflicted upon defendants by the granting of relief; that plaintiff has no adequate remedy at law.

(47) That the public officers charged with the duty to protect plaintiff's property are unable or unwilling to furnish adequate protection.

(48) Plaintiff shows to the Court that unless a temporary restraining order shall be issued without notice, that a substantial and irreparable injury to plaintiff's property will be unavoidable; and plaintiff prays that such temporary restraining order shall be issued for the protection of the lives of its employees and for the protection of its property.

Wherefore, Plaintiff prays that:

(A) Brotherhood of Railroad Trainmen, Enterprise Lodge No. 27, F. W. Coyle, Vice President of Brotherhood of Railroad Trainmen, and Brotherhood of Locomotive Firemen and Enginemen, Robert Mason Lodge No. 926, W. C. Keiser, Vice President of Brotherhood of Locomotive Firemen and Enginemen, and W. J. Christoff, J. J. Gimming, Garland F. Brown, W. L. Brown, C. S. Gabbert, Hustler Wilson, Carl Roskamp, George Kneisley, Verd Kirk, H. J. Siebenthal, J. L. Feuger, Herman Reiman, G. L. Underwood, A. R. Overacker, H. E. Cole, H. O. Todd, Walter McMullen, W. E. Causey, Walter Kohtz, C. L. Brown, H. J. Dilley, O. W. Kirk, C. H. Kirk, Clinton Stetler, K. A. Feldt, Frank W. Lucas, Leo Totten, Delmar Newdigate and Arthur Brewster, who are named defendants herein, may be required to answer this complaint.

(B) That a summons may be issued for said defendants, and each of them, requiring them to appear and answer this complaint within the time required by law.

(C) That said defendants and each of them, pending the hearing on this complaint, may be enjoined and restrained from:

(1) Assaulting or attempting to injure by violence, or otherwise, any of the employees or officers of the plaintiff desiring to return to work, or desiring to work for the plaintiff.

(2) Intimidating or attempting to intimidate, by force or violence or personal assault upon employees or officers of the plaintiff, in order to keep them from returning to work and continuing their work with the plaintiff, or to prevent others desiring to enter the employ of the plaintiff from doing so.

(3) Congregating on picket lines in numbers in excess of the number fixed by the order of the Court in the vicinity of the premises of the plaintiff, and by threats of violence and acts of violence preventing or attempting to prevent employees or officers of the plaintiff, or those designing to work for the plaintiff, from entering or reaching the premises of the plaintiff.

(4) Interfering or attempting to interfere with the plaintiff in the operation of its railroad or the receiving, transportation or delivery of interstate freight consigned to it, or its patrons from points without the State of Illinois to or through points within or without the State of Illinois, and from in any way interfering with the operation of plaintiff's railroad.

(5) Cooperating, confederating and conspiring for the purpose of in any way interfering with the plaintiff in the handling of war and national defense material, including arms, armament, ammunition, livestock, stores of clothing, food, foodstuffs, fuel, supplies, munitions, and all other articles of whatever description and any part or ingredient thereof intended for use of the United States in connection with the national defense, or for use in or in connection with the producing, manufacturing, repairing, storing, mining, extracting, distributing, loading, unloading, or transportation of any of the materials or other articles hereinabove mentioned, or any part or ingredient thereof, and from interfering with the handling of any and all material on its trains consigned or moving in interstate commerce.

40 (6) Congregating at or near the premises of the plaintiff for the purpose of preventing or attempting to prevent by threats or intimidation or violence, or threats of violence to any person engaged in or remaining in the employ of the plaintiff.

(7) Singly or in combination, or in conspiracy with each other, or with others, preventing or attempting to prevent by threat of force, or intimidation, or by the use of profane, insulting or abusive language, or by force and violence or threat of violence to any person being employed by the plaintiff, or engaged in or remaining in the employment of the plaintiff, or in performing any business, labor or duties for the plaintiff.

(8) By violence or threat of violence, coercing or attempting to coerce any person in the employ of the plaintiff, or about to enter the employ of the plaintiff, not to remain in the employ of the plaintiff.

(9) In any manner interrupting, obstructing or interfering by force or intimidation or by violence or threat of violence with the movement or passage of any person toward, to, upon, or from said property of the plaintiff.

(10) In any manner interrupting, obstructing or interfering by force or intimidation or by violence or threat of violence with the movement or passage or shipment or consignment of freight or raw material from points without the State of Illinois to points within the State of Illinois, or from points within the State of Illinois to points without the State of Illinois, or from points without the State of Illinois through the State of Illinois to points without the State of Illinois, or the passage or movement of trains of the plaintiff carrying such interstate commerce.

41. (11) By violence or threat of violence, molesting or threatening any member of the family of any employee or officer or by violence or threat of violence or injury coercing any employee or officer of the plaintiff, or damaging the home or residence of any member of the family or any such employee or officer.

(12) Congregating in any group or groups in the vicinity of the plaintiff's property for the purpose or with the intention of committing any act of violence upon any employee or officer of the plaintiff or any one desiring to enter the employ of the plaintiff.

(13) Firing any shot or missile, rock or stone or club at, toward, or against or upon the property of the plaintiff or any employee or officer of the plaintiff or those desiring to enter its employ, or by force or violence damaging the property of the plaintiff or interfering by force or violence with plaintiff's business or its customers and the use and enjoyment by the plaintiff of its said railroad, and the carrying on of its business and the movement of its trains, engines, and cars for the transportation of interstate commerce.

(14) In any way by force or violence or threat of violence interfering with, obstructing or preventing the operation of plaintiff's railroad in the handling of interstate commerce and from in any way by force or violence or threat or violence seeking to prevent employees of the plaintiff or those desiring to enter its employ from continuing and working as employees of the plaintiff.

(15) Violence or threats of violence or damaging or attempting to damage or injure any of the property of the



plaintiff used in the transportation of Interstate Commerce, including any other property of the plaintiff.

42 (16) From destroying or attempting to destroy, unlocking, opening or disarranging switches of the plaintiff and damaging, injuring or changing signals on the switch stands of the plaintiff so as to in any way endanger the movement of a train over the tracks of the plaintiff and from damaging, cutting, breaking or otherwise interfering with the telegraph system of the plaintiff, or any of other property used in connection with the operation of its trains in the transportation of freight in interstate commerce.

(17) From tampering with, damaging or destroying, or attempting to damage or destroy, any portion of the roadway, ballast, tie and tract structure, bridge, culvert, building, signal, telegraph line, locomotive, car, or any other building, structure, piece of machinery or equipment used by plaintiff in its business.

(18) That plaintiff may be granted a temporary restraining order against the defendants pending the hearing upon its application for a temporary injunction at such time as may be fixed by the Court.

(19) That plaintiff may be granted a temporary injunction enjoining the defendants as hereinabove prayed pending the final hearing upon this complaint, and that upon final hearing a permanent injunction may be granted the plaintiff as against the defendants restraining the said defendants and each of them from acts as hereinabove prayed.

(20) That plaintiff may have such and other general relief as equity may require.

Toledo, Peoria & Western Railroad.

By /s/ Geo. P. McNear, Jr.,

*Its President.*

/s/ John M. Elliott,

John M. Elliott,

1401 Alliance Life Building,

Peoria, Illinois,

and

/s/ Clarence W. Heyl,

Clarence W. Heyl,

Central National Bank Building,

Peoria, Illinois,

*Attorneys for plaintiff.*



*Complaint.*

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43 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption)

State of Illinois, }  
County of Peoria. } ss.

Geo. P. McNear, Jr., being first duly sworn upon oath, deposes and says that he is President of Toledo, Peoria & Western Railroad, plaintiff in the above entitled cause, that he has read the above and foregoing complaint and knows the contents thereof; that the matters and things therein set forth are true as he verily believes, except insofar as they are stated to be upon information and belief, and that as to such matters he verily believes them to be true based upon the information furnished him.

Affiant further says that he verily believes that if a temporary restraining order is not issued in this case without notice to the defendants, that bodily injury and possibly death may result to the employees of the plaintiff in their attempt to conduct work for plaintiff; and that substantial and irreparable injury and damage to plaintiff's property will be unavoidable if notice is given to the defendants of application for a temporary restraining order prior to the issuance of a temporary restraining order.

(S) Geo. P. McNear, Jr.

Subscribed and sworn to before me this 3rd day of January, A. D. 1942.

(S) Esther M. Schulthers,

(Seal)

Notary Public.

## EXHIBIT "A."

National Mediation Board  
Washington

David J. Lewis, Chairman  
George A. Cock  
Otto S. Beyer

November 21, 1941

Robert F. Cole, Secretary

Case A-903

Mr. H. H. Best, Supt.,  
Toledo, Peoria and Western Railroad,  
Union Station, Peoria, Ill.

Mr. F. W. Coyle, Vice Pres.,  
Brotherhood of Railroad Trainmen,  
Congress Hotel, Chicago, Ill.

Gentlemen:

We have been advised by Mr. H. H. Best, Supt., Toledo, Peoria and Western Railroad; and Mr. F. W. Coyle, Vice Pres., Brotherhood of Railroad Trainmen, in answer to our letter addressed to you jointly under date of November 7, 1941, that the carrier and the organization have declined, in writing, to arbitrate the question in case our file A-903, as set forth in our letter of November 7.

Your attention is therefore directed to the last clause in Section 5, First (b), of the Railway Labor Act, as amended, reading as follows:

"If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under Section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose."

It is the judgment of our Board that all practical methods provided in the Railway Labor Act for our adjusting the dispute have been exhausted, without effecting a settlement.

In these circumstances, notice is hereby served in behalf of the Board that its services (except as provided in Section 5, Third, and in Section 10 of the Law) have this day

been terminated under the provisions of the Railway Labor Act.

45 We are sending to Mr. Coyle copy of letter from Mr. Best dated November 17, 1941, and to Mr. Best copy of letter from Mr. Coyle dated November 8.

By direction of the National Mediation Board.

(S) Robt. S. Cole,  
*Secretary.*

CC: Mr. A. F. Whitney, Pres.,  
Brotherhood of Railroad Trainmen.

46 Mediation Case No. A-903

Jefferson Hotel  
Peoria, Illinois  
November 8, 1941

Mr. Robert F. Cole, Secretary  
National Mediation Board  
Washington, D. C.

Dear Sir:

Please refer to "Arbitration Offer" proposed by Mediator Murray in his letter of November 7, 1941, addressed to Mr. H. H. Best and the undersigned, in connection with Mediation Case No. A-903, involving proposed revision of agreement covering rates of pay, rules and working conditions desired by the Management and counter proposed schedule submitted by the Brotherhood of Railroad Trainmen, General Committee, as applying to conductors, brakemen, yardmen and switchtenders employed on the Toledo, Peoria and Western Railroad.

Proposal to arbitrate the above mentioned controversy, and, statements advanced by Mediator Murray as to why all interested parties should agree to arbitration, have been very thoroughly considered and wish to advise we are respectfully declining to submit the dispute in question to arbitration.

Please address any further communications you might have for me to the Congress Hotel, Chicago, Illinois.

Yours very truly,

(S) F. W. Coyle,  
F. W. Coyle,

*Vice President—B. of R. T.*

Cy—Mr. A. F. Whitney,

*President Brotherhood of Railroad Trainmen.*

## EXHIBIT "B."

National Mediation Board

Washington

David J. Lewis, Chairman  
George A. Cook  
Otto S. Beyer

November 21, 1941.

Case No. A-904.

Robert F. Cole, Secretary

Mr. H. H. Best, Superintendent,  
Toledo, Peoria & Western Railroad,  
Peoria, Illinois:

Mr. W. C. Keiser, Vice President,  
Brotherhood of Locomotive Firemen and Enginemen,  
Jefferson Hotel,  
Peoria, Illinois.

Gentlemen:

We have been advised by Mr. H. H. Best, Superintendent, Toledo, Peoria & Western Railroad, under date of November 17, 1941 and by Mr. W. C. Keiser, Vice President, Brotherhood of Locomotive Firemen and Enginemen, under date of November 8, 1941, in answer to our letter addressed to you jointly under date of November 7, 1941, that the carrier and organization have declined, in writing, to arbitrate the question in case our file A-904, as set forth in our letter of November 7, 1941.

Your attention is therefore directed to the last clause in Section 5, First (b), of the Railway Labor Act, as amended, reading as follows:

"If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under Section 10 of this Act, no change shall be made in the rates of pay, rules or working conditions or established practices in effect prior to the time the dispute arose."

It is the judgment of our Board that all practical methods provided in the Railway Labor Act for our adjusting

the dispute have been exhausted, without effecting a settlement.

In these circumstances, notice is hereby served in behalf of the Board that its services (except as provided in Section 5, Third, and in Section 10 of the law) have this day been terminated under the provisions of the Railway Labor Act.

48 We are sending to Mr. Best a copy of Mr. Keiser's Letter dated November 8, 1941 and to Mr. Keiser a copy of Mr. Best's letter dated November 17, 1941:

By direction of the National Mediation Board.

Robt. F. Cole, (Signed)

Secretary.

CC: Mr. D. B. Robertson, President  
Brotherhood of Locomotive Firemen and Enginemen  
318 Keith Building  
Cleveland, Ohio.

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Peoria, Illinois,  
November 8, 1941.

Mr. Robt. F. Cole, Secretary,  
National Mediation Board,  
Washington, D. C.

Dear Sir:

This will acknowledge communication from Mediator John F. Murray, addressed to Mr. H. H. Best, Superintendent, Toledo, Peoria & Western Railroad and the undersigned on November 7, 1941, requesting that we enter into an agreement to submit the dispute involving proposed schedule covering rates of pay, rules and working conditions for engineers, firemen, helpers, hostlers and hostler helpers employed on the Toledo, Peoria & Western Railroad to arbitration as provided in Section 8 of the Railroad Labor Act.

We have given careful consideration to this request that we agree to arbitrate this dispute and this is to advise that such request is respectfully declined.

As the Mediator has left the property and apparently severed his connection with this case, please be advised that we contemplate submitting the wage and rules question, Toledo, Peoria & Western Railroad to a strike vote of the employees represented by our Organization.

Yours very truly,

W. C. Keiser (Signed)

Vice President, B. of L. F. & E.

CC—D. B. Robertson



## EXHIBIT "C."

## Statement Of Zeno F. Merrill.

My name is Zeno F. Merrill, age 42, and I reside at R. R. 6, East Peoria, Illinois. I am employed as engineer by the T. P. & W. Railroad Company at Peoria, Illinois. I have been employed by that Company since 1922.

On the night of December 30th, 1941, I checked off duty at the T. P. & W. roundhouse, East Peoria, Illinois, at 5:30 P. M. I had arranged to ride home in the automobile of another employee, Mr. Herschel Thompson, and he picked me up at the crew caller's office in the T. P. & W. yards. I got in the rear seat of the automobile which was a two door sedan and laid down on the floor of the car. It was dark at this time. Mr. Thompson drove out the lane leading from the T. P. & W. yards to the hard road which is Route 24. The hard road is about two blocks from the crew house. As we got to the hard road and pulled up on the hard road our car was involved in a slight collision with a truck which was going east on the hard road. Thompson stopped the car on the north shoulder across the hard road from the road leading to the T. P. & W. yard. Thompson got out of the car and walked back to the truck that he had collided with and I remained in the car on the floor. In a few moments a large group of men came over to the car and looked in through the left window which had been broken in the accident. Of this group I recognized two at this time and those two were H. O. Todd and Walter McMullin. The first statements made by these men were as follows:

"You get out of that car."

There was a large group of men pushing and shoving around the car and swearing and cursing at me and ordering me to get out of the car and making threats of violence toward me. As I did not immediately get out of the car McMullin who was standing next to the left car door pulled it open and threatened to pull me out of the car. Rather

than be pulled out of the car I told them that I would  
51 get out, which I did. I stepped out of the left door of the car on to the shoulder on the north side of the hard road. As soon as I stepped out on the ground I was immediately surrounded by a large group of men numbering at least eight or ten. These men immediately seized me and started striking me, mauling me and beating me in a

violent manner. At least one of the men who were beating on me had a club. The rest were striking me with their fists and kicking me. They pushed me across the hard road to the south shoulder, over a guard rail and down into a ditch on the south side of the road in a deep ditch about forty feet west of the entrance to the T. P. & W. private road. I was on the ground and a number of the men were still beating on me. Of the men who were beating me and striking me I recognized and can identify the following: W. E. Causey, Walter McMullin, Walter Koltz, H. O. Todd, Carl Roskamp and C. L. Brown. As a result of the beating and being knocked around I was semi-blinded and when somebody came up and took me by the shoulder and said: "Get in that car," I got up and got into a car, it may have been the same car that I came out in, and was taken back into the T. P. & W. yards. I waited at the Master Mechanic's office until the East Peoria police came and Thompson and I followed the police car to the hard road where they picked up three of the men who had beat me up. I think those three were Causey, McMullin and Todd or Koltz. We all then went to the City Hall in East Peoria where I appeared before Police Magistrate Jess McKenzie and swore out assault and battery warrants for W. E. Causey, Walter McMullin, Walter Koltz, H. O. Todd, Carl Roskamp and C. L. Brown.

(S) Zeno F. Merrill.

State of Illinois, )  
County of Peoria. ) ss.

Before me John H. Royster, a Notary Public in and for said County appeared Zeno F. Merrill, personally known to me to be the same who acknowledged that he had read the above and foregoing statement and swore on his oath that the facts set out therein were true and correct.

(S) John H. Royster,

(Seal)

Notary-Public.

Dated 12-31-41.

State of Illinois, }  
County of Peoria. } ss.

Harold E. Kipling, being first duly sworn upon his oath deposes and says that he is of the age of 40 years, a resident of the City of East Peoria, Tazewell County, Illinois, residing at 805 Springfield Mill, East Peoria, Illinois; that he is an employee of the Toledo, Peoria and Western Railroad, as Chief Special Agent, and has been so employed for upwards of two years; that he is also the present duly appointed and qualified deputy sheriff in and for the County of Tazewell and State of Illinois.

Affiant further states that on Friday, January 2nd, 1942, he accompanied a freight train of the Toledo, Peoria & Western Railroad, destined for Keokuk, Iowa, from East Peoria, Illinois, by driving his automobile on the highway paralleling with the railroad tracks upon which the said train traveled; that when said train reached the Hiram Walker crossing which is located at Edmund Street in the City of Peoria, Illinois, the train was proceeding slowly in a westerly direction and then consisted of a locomotive, tender, approximately 25 or 30 freight cars and cabooses. Affiant was then in his automobile at or near said crossing. An automobile pulled up and stopped near affiant's automobile, which said automobile was driven by John Gimming, formerly a switchman in the employ of the T. P. & W. Railroad. Accompanying the said John Gimming in said automobile was a Mr. Brewster, formerly employed as a fireman for the T. P. & W. The said John Gimming then and there in a threatening manner made the following statement to affiant: "You are not coming back off of the west end today; we are going to get all of the rest of them too; none of them are coming back; they might go out, but they are not coming back." Affiant said, "Is that so." John Gimming further said "We have the stuff to get you with too." I then turned my car and followed the said freight train as it proceeded westerly leaving the City of Peoria, and stopped my car at what is commonly known as the "P. T. Tower," near the M. & St. L. Crossing. The said John Gimming with his passenger, the said Brewster, drove immediately up to the rear of my automobile and

stopped; at the same time another car in which there were a number of persons, drove up; I identified three of the persons in said car as being Delmar Newdigate, former switchman for the T. P. & W. Railroad, Walter McMullen, former brakeman, and George Kneisley, former brakeman and extra conductor of the said T. P. & W. Railroad. Affiant was unable to clearly observe the other occupants of said automobile so as to be able to identify them. The said persons in the second car last above mentioned opened the door of their car and cursed and shook their fists at the train crew on said freight train as it passed them in a westerly direction.

I then turned my car and proceeded toward Hollis on the highway parallel with the said T. P. & W. railroad tracks. My next stop was on the highway near the Central Illinois Light Company substation on South Adams Street beyond the viaduct. At that time I observed a third automobile in addition to the two above described. I was unable to identify the driver of the third car. The said John Gimming drove his automobile immediately to the rear of my automobile and stopped. The other two automobiles proceeded about 50 yards to the south of the place where my automobile was stopped. They pulled up alongside of each other and conversed, that is they had their windows open, so I suppose they were conversing. Gimming pulled from behind me and went down to where these two cars were, and it looked like they were all conversing. They had their doors open. Gimming then turned his car and came up along parallel with me only he was headed in the opposite direction. He sat there and looked at me but did not say anything.

53 The said freight train then started moving westerly.

I followed with my automobile until the said train reached a point directly opposite the Allied Mills plant, where the said train stopped to set out some cars. Upon approaching the place where the said train was stopped I observed an aggregation of men of about 25 in number near the right of way of the said railroad. After the said train came to a stop some of the men from the said mob came up nearly where the engine of the said train had stopped. The said train then started moving in a westerly direction. Some of the men from said mob moved toward the engine, and as the engine was traveling slowly westwardly past the said mob, I saw Frank W. Lucas

throw a bottle into the cab of the engine, and immediately thereafter saw flames envelop the interior of the cab of said engine. I also saw some other person, a member of said mob, throw another bottle into the cab, but I do not know the name of the person who threw that bottle. At the time the said bottle was thrown into the said cab, it appeared that the bottle contained fluid. The bottle appeared to be a whiskey bottle.

Immediately after Frank W. Lucas threw said bottle into the cab of the engine, he ran and got into an automobile driven by Leo Totten, the engine of which automobile was running, and was headed toward Peoria. The said Totten immediately started said automobile in a northerly direction; affiant following said automobile finally overtook it at or near the corner of Western and South Adams Street, in the City of Peoria, and forced the said Totten to stop said automobile and remain until the police officers arrived and took possession of the said Frank W. Lucas and Leo Totten.

Affiant further states that after he accompanied the said Frank W. Lucas and Leo Totten to the city hall in the City of Peoria, where the said parties were placed under arrest by the police officers, he returned in his automobile to Canton, Illinois, and made an examination of the said locomotive, which said locomotive had by that time reached the city of Canton. Upon examination of the interior of the cab of said locomotive, he found that the engineer's seat had been burned, and the glass on one of the gauges on said locomotive had been broken. He observed that Homer Gulick had been injured as a result of the fire caused by the burning of the substance in said bottles, the said engineer's face was burned, and also his eyebrows. Affiant further states that the odor from the contents of the bottle thrown in the locomotive was still present, and that he observed the said odor, and it was that of either gasoline or benzine. Affiant further states that he had the police officers in the city of Canton take possession of the broken glass from the bottle, and directed said police officers to seal the same and preserve to be used as evidence.

Further affiant saith not.

Harold E. Kipling /s/



Subscribed and sworn to before me on this the 2nd day of July, 1942.

Francess M. Cassidy /s/  
Notary Public.

(Seal)

Endorsed: Filed January 3, 1942. G. W. Schwaner,  
Clerk.

54 And afterwards, to-wit: on the 3rd day of January, A. D. 1942, at 3:50 o'clock p. m., certain Finding of Facts on Application for a Temporary Restraining Order was filed in the office of the clerk of said court and entered of record in said cause, which said Finding of Facts was and is in the words and figures following, to-wit:

Entered  
Jan. 3,  
1942.

55 IN THE UNITED STATES DISTRICT COURT.  
(Caption—P-149)

**FINDINGS OF FACTS ON APPLICATION FOR A  
TEMPORARY RESTRAINING ORDER.**

56 (a) The plaintiff is a corporation duly organized and existing under the laws of the State of Illinois, and is now and has been for many years last past engaged in operating a railroad between Effner, Indiana and Keokuk, Iowa, through the State of Illinois; and is now and has been for many years last past a common carrier of freight by railroad within the State of Illinois and into the states of Iowa and Indiana and in connection with other roads; and is now and has been for many years last past engaged in interstate commerce under the laws of the State of Illinois; and is a railroad subject to the provisions of an Act of Congress, namely, "An Act to Regulate Commerce," and all Acts amendatory and supplementary thereto.

(b) The plaintiff as a common carrier is subject to the Railway Labor Act of the United States as amended; and as such carrier subject to and included within the words "War Materials" as defined by the Federal Statutes.

(c) The plaintiff in connection with its business as a common carrier maintains and operates a railroad extending from Effner, Indiana to Keokuk, Iowa, with various

branches or spurs connecting with other interstate railroad carriers.

(d) That the plaintiff has in good faith complied with all of the provisions of the Railway Labor Act in endeavoring to reach an agreement with the Brotherhoods and its employees; that the plaintiff has complied with all its obligations imposed upon it by the laws of the United States relating to labor disputes.

(e) That on or about December 28, 1941, the plaintiff received written notice from officers of said Brotherhoods that all employees of the classes represented by said Brotherhoods would be withdrawn from the service of the plaintiff at Six P. M. on Sunday, December 28, 1941; 57 and that said employees were withdrawn from the service of the plaintiff at Six P. M. on Sunday, December 28, 1941, and have since refused to return to their respective places of employment with the plaintiff; that prior to the calling of said strike by said Brotherhoods the plaintiff was engaged in handling of interstate traffic between the State of Illinois and other states through the State of Illinois, from and between other states, the said traffic so handled by the plaintiff included the transportation of war materials; arms; armaments, ammunition, livestock, clothing, food, food stuffs, fuel supplies, munitions and other articles and ingredients thereof intended for, or suitable for, the use of the United States or associated nations in connection with the conduct of war; that the action of the defendants following said strike, as hereinafter found and set forth in this order, have interfered with and now interferes with and prevents the plaintiff from continuing as such common carrier in the transportation of such articles; that the freight and material transported by plaintiff prior to the said strike included the articles aforesaid, and the plaintiff, by reason of the unlawful and unauthorized acts of the defendants, has been prevented, and is now being prevented, from the transportation of such articles in interstate commerce.

(f) That the defendants and other persons who have congregated with them have come upon the premises of the plaintiff, or roadways leading to said premises in the vicinity of the plaintiff's railroad in great numbers, and by threats, abusive language, intimidations and violence have caused other employees of the plaintiff to cease their employment and remain away from their work by reason

of their fear of violence and injury; and the said defendants have prevented other persons desiring to enter the employ of the plaintiff from doing so by reason of threats of violence, violence and intimidations; that said acts have occurred upon the premises of the plaintiff, and upon its trains while the said trains were traveling through the State of Illinois conveying interstate commerce; and the said acts were committed on each of the following days: December 29, 1941, December 30, 1941, December 31, 1941 and January 2, 1942.

(g) That the defendants, on or about December 29, 1941, entered into an unlawful combination or conspiracy to obstruct and interfere with the business of the plaintiff and to interrupt the business of the plaintiff and to destroy the property and business of the plaintiff, all used by it in the transportation of interstate commerce upon its said railroad.

(h) That beginning on December 29, 1941, and continuing thereafter to the date of the filing of the complaint herein, the said defendants and others confederated with them, have congregated in large numbers upon the highway adjacent to a road leading to the yards and property of the plaintiff, and said persons have armed themselves with stones, brickbats, clubs and other missiles, and have, by force and threats of personal violence, prevented employees of the plaintiff from going to and from their employment, and have prevented other persons having business with the plaintiff to enter upon the premises of the plaintiff for the purpose of transacting business; and said defendants have threatened violence against said employees of the plaintiff in the event said employees continued in their said employment and have threatened other employees by ordering them to remain away from the premises of the plaintiff and not return to their respective places of employment.

59 (i) That by reason of the unlawful and unauthorized acts of the said defendants in their acts of violence and threats of violence against the employees of plaintiff in preventing said employees, by reason of said violence and threats of violence to continue their work as employees of the plaintiff, the said plaintiff has been and is prevented from continuing the operations of its trains in the movement of interstate commerce.

(j) That on December 31, 1941, and again on January

2, 1942, the said defendants congregated in large numbers on the highways parallel and adjacent to a railroad right of way of the plaintiff, and certain of said defendants traveling in automobiles on said highways near the train of the plaintiff, and at various points where said train was required to stop in the transaction of business, the said defendants threatened violence to the members of the crew in charge of said train, and certain of said defendants attempted to halt the progress of said train, and threw stones, bricks, and other missiles at the said train, breaking the windows in the engine and caboose of said train, and inflicted bodily injury upon certain employees of the plaintiff while said employees were engaged in the performance of their occupation in operating a train in interstate commerce.

(k) That on January 2, 1942, the said defendants congregated in large numbers upon the highway leading from the Village of Bartonville, Peoria County, Illinois, to Canton, Fulton County, Illinois; and at a point near the switch track of the Allied Mills two of said defendants wilfully and maliciously threw glass whiskey bottles with benzine or gasoline into the cab of said engine drawing said train, causing the said substance to explode and set fire to the said locomotive engine and inflicting serious burns upon the engineer and other employees of the plaintiff on said engine.

60 (l) That on January 2, 1942, certain of said defendants threatened the employees of the plaintiff by advising them that if they, the said employees, took the train of the plaintiff out of Peoria to the western division of said railroad, that said employees would never get back, meaning and intending to commit bodily injury or harm to said employees in the event that they, the said employees, attempted to operate said train of the plaintiff from Peoria to Keokuk, Iowa; and at various points along said railroad right of way the said defendants congregated and made divers other threats to the employees of said plaintiff as they were attempting to operate said train from Peoria to Keokuk, Iowa; and said defendants traveled in automobiles along the highway adjacent to and parallel with said railroad, and at many points where said train was required to stop while in the county of Peoria, the said defendants continued their threats and acts of intimidation and violence and threw stones, bricks, clubs

and other missiles at said train and the crew operating the same; and all of said acts found in this paragraph occurred before the said train described in the preceding paragraph reached the point near the switch track of the Allied Mills, when the attempt was made by certain of said defendants to burn said locomotive and injure the employees of the plaintiff therein riding; that all of the acts found to have been committed and set forth in this and preceding paragraphs resulted in the delay and interruption of the interstate commerce business of the said plaintiff, and if the said unlawful acts and threatened continuation of similar unlawful acts is not restrained by this Court, the prosecution of the business of the plaintiff as an interstate carrier will be entirely prevented.

(m) That on December 29, 1941, the said defendants greased the high rail on a curve in the plaintiff's railroad track on New Philadelphia hill in the county of Mc-61 donough, in the State of Illinois, and that when the engine and train of the plaintiff reached said greased rail, the engine and train were caused to slip and slide; that the said defendants have threatened to continue similar acts of tampering with the rails and other equipment of the railroad, which, if continued, will result in derailment of trains of the plaintiff, damage to property and loss of life.

(n) That on December 30, 1941, the defendants unlocked switches and broke lamps at the following places upon the said railroad, to-wit: Sheldon, Webster, Leonard, Forrest, LaHogue, and Chatsworth, all stations in the State of Illinois; and that said switches had been turned so as to cause a train to leave the main track; and that because of the destruction or removal of the signals from said switches, the operators of the said trains would be unable to discover or ascertain that said switches had been thrown; and that the continuation of said unlawful and unauthorized acts of the defendants in tampering with the switches or signals upon said switches would result in irreparable loss and damage to the property of the plaintiff and injury to the persons operating said trains.

(o) That on December 31, 1941, one telegraph line of plaintiff's system near Mile Post 4-26, near Webster, Illinois, was cut, and the ends wrapped around two other wires, thereby preventing the operation of the telegraph system of the plaintiff used in the operation of its said railroad.



(p) That on December 29, 1941, on December 31, 1941, and on January 2, 1942, certain of said defendants threatened violence against the employees of certain other interstate connecting railroads while said interstate connecting railroads were, by their said crews, trying to make delivery of certain cars of merchandise and other equipment to the plaintiff, which said cars so being delivered to the plaintiff might be transported on the railroad of the plaintiff, and which said cars then and there contained interstate commerce; that by reason of the unlawful acts of the said defendants and their threats of violence against the crews of trains of other interstate connecting carriers, the delivery of many cars of interstate freight to the plaintiff by said connecting carriers was delayed and prevented, and the crews of said other roads feared to make delivery because of threat of injury to them, and fear that they would receive bodily harm from the hands of the said defendants so making said threats; that irreparable damage and injury will result to the plaintiff in the future unless the said defendants are restrained by injunction of this Court from further interference with the crews operating trains, or portions of trains belonging to other interstate carriers while said crews are attempting to make delivery of interstate commerce to plaintiff.

(q) That unlawful acts have been threatened and will be committed unless restrained, or have been committed and will continue to be committed unless restrained, as set forth in said verified complaint, by persons, associations or organizations named defendants to said complaint, making the threats or committing the unlawful acts; .

(r) That substantial and irreparable injury to plaintiff's property will follow, including interference with the transportation of interstate commerce;

(s) That as to each item of relief granted, greater injury will be inflicted upon the plaintiff by the denial of the relief than will be inflicted upon the defendants by the granting of the relief;

(t) That plaintiff has no adequate remedy at law; and

(u) That public officers charged with the duty of protecting plaintiff's property are unable or unwilling to furnish adequate protection to said property or the employees of plaintiff.

63 (v) That on all of the dates charged in the verified complaint, the said plaintiff was engaged as a com-

mon carrier of interstate commerce; that the matter in controversy in this cause is of a civil nature, and exceeds, exclusive of interest and costs, a sum in excess of Three Thousand (\$3,000.00) Dollars.

(w) That said defendants, or some one, or more of them, at various times since the 29th day of December, 1941, and continuing up until the time of the filing of this complaint, have been guilty of acts of violence and threats of violence against various employees of the plaintiff and have damaged and threatened to damage the property, trains and engines of the plaintiff; that various of said defendants have threatened that they will continue such acts of violence; that employees of the plaintiff have been injured, as set forth in said complaint, and as found by this Court in the preceding paragraphs of the findings of this Court and this order; and the Court finds from the sworn evidence heard upon hearing of this application that there is danger of continued acts of violence and damage to the property of the plaintiff by said defendants, or some one or more of them; and that if notice of the application of plaintiff for this restraining order is given to the defendants that more acts of violence and damage to property will occur before hearing may be had; and the Court further finds that by reason of such acts of violence and continued threats of acts of violence, that a temporary restraining order should be issued, without notice to the defendants; that to give notice to said defendants of such application will result in continued and increased acts of violence and injury to employees of the plaintiff and damage to its property.

January 3, A. D. 1942.

/s/ J. Leroy Adair,  
*Judge.*

Endorsed: Filed Jan. 3, 1942, at 3:50 o'clock p. m.  
G. W. Schwaner, Clerk.

64 And afterwards, to-wit: on the 3rd day of January, A. D. 1942, at 3:50 o'clock p. m., a certain Temporary Restraining Order was filed in the office of the clerk of said court and entered of record in said cause, which said Temporary Restraining Order was and is in the words and figures following, to-wit:

Entered 65  
Jan. 3,  
1942.

IN THE UNITED STATES DISTRICT COURT.

\* \* (Caption—P-149) \* \*

**TEMPORARY RESTRAINING ORDER.**

This cause now coming on to be heard upon the verified complaint of the plaintiff herein for temporary restraining order, without notice, and the Court having heard the oral testimony under oath produced in support of said verified complaint, sufficient if sustained, to justify the Court in issuing a temporary injunction upon a hearing after notice, and the Court having considered the same, upon consideration thereof, finds:

66 (a) The plaintiff is a corporation duly organized and existing under the laws of the State of Illinois, and is now and has been for many years last past engaged in operating a railroad between Effner, Indiana and Keokuk, Iowa through the State of Illinois; and is now and has been for many years last past a common carrier of freight by railroad within the State of Illinois and into the states of Iowa and Indiana and in connection with other roads; and is now and has been for many years last past engaged in interstate commerce under the laws of the State of Illinois; and is a railroad subject to the provisions of an Act of Congress, namely, "An Act to Regulate Commerce," and all Acts amendatory and supplementary thereto.

(b) The plaintiff as a common carrier is subject to the Railway Labor Act of the United States as amended, and as such carrier subject to and included within the words "War Materials" as defined by the Federal Statutes.

(c) The plaintiff in connection with its business as a common carrier maintains and operates a railroad extending from Effner, Indiana to Keokuk, Iowa, with various branches or spurs connecting with other interstate railroad carriers.

(d) That the plaintiff has in good faith complied with all of the provisions of the Railway Labor Act in endeavoring to reach an agreement with the Brotherhoods and its employees; that the plaintiff has complied with all its obligations imposed upon it by the laws of the United States relating to labor disputes.

(e) That on or about December 28, 1941, the plaintiff received written notice from officers of said Brotherhoods that all employees of the classes represented by said 67 Brotherhoods would be withdrawn from the service of the plaintiff at Six P. M. on Sunday, December 28, 1941; and that said employees were withdrawn from the service of the plaintiff at Six P. M. on Sunday, December 28, 1941, and have since refused to return to their respective places of employment with the plaintiff; that prior to the calling of said strike by said Brotherhoods the plaintiff was engaged in handling of interstate traffic between the State of Illinois and other states through the State of Illinois, from and between other states, the said traffic so handled by the plaintiff included the transportation of war materials, arms, armaments, ammunition, livestock, clothing, food, food stuffs, fuel supplies, munitions and other articles and ingredients thereof intended for, or suitable for, the use of the United States or associated nations in connection with the conduct of war; that the action of the defendants following said strike, as hereinafter found and set forth in this order, have interfered with and now interferes with and prevents the plaintiff from continuing as such common carrier in the transportation of such articles; that the freight and material transported by plaintiff prior to the said strike included the articles aforesaid, and the plaintiff, by reason of the unlawful and unauthorized acts of the defendants, has been prevented, and is now being prevented, from the transportation of such articles in interstate commerce.

(f) That the defendants and other persons who have congregated with them have come upon the premises of the plaintiff, or roadways leading to said premises in the vicinity of the plaintiff's railroad in great numbers, and by threats, abusive language, intimidations and violence have caused other employees of the plaintiff to cease 68 their employment and remain away from their work by reason of their fear of violence and injury; and the said defendants have prevented other persons desiring to enter the employ of the plaintiff from doing so by reason of threats of violence, violence and intimidations; that said acts have occurred upon the premises of the plaintiff, and upon its trains while the said trains were traveling through the State of Illinois conveying interstate commerce; and the said acts were committed on each

of the following days; December 29, 1941, December 30, 1941, December 31, 1941 and January 2, 1942.

(g) That the defendants, on or about December 29, 1941, entered into an unlawful combination or conspiracy to obstruct and interfere with the business of the plaintiff and to interrupt the business of the plaintiff and to destroy the property and business of the plaintiff, all used by it in the transportation of interstate commerce upon its said railroad.

(h) That beginning on December 29, 1941, and continuing thereafter to the date of the filing of the complaint herein, the said defendants and others confederated with them, have congregated in large numbers upon the highway adjacent to a road leading to the yards and property of the plaintiff, and said persons have armed themselves with stones, brickbats, clubs and other missiles, and have, by force and threats of personal violence, prevented employees of the plaintiff from going to and from their employment, and have prevented other persons having business with the plaintiff to enter upon the premises of the plaintiff for the purpose of transacting business; and said defendants have threatened violence against said employees of the plaintiff in the event said employees 69 continued in their said employment and have threatened other employees by ordering them to remain away from the premises of the plaintiff and not return to their respective places of employment.

(i) That by reason of the unlawful and unauthorized acts of the said defendants in their acts of violence and threats of violence against the employees of plaintiff in preventing said employees, by reason of said violence and threats of violence to continue their work as employees of the plaintiff, the said plaintiff has been and is prevented from continuing the operations of its trains in the movement of interstate commerce.

(j) That on December 31, 1941, and again on January 2, 1942, the said defendants congregated in large numbers on the highways parallel and adjacent to a railroad right of way of the plaintiff, and certain of said defendants traveling in automobiles on said highways near the train of the plaintiff, and at various points where said train was required to stop in the transaction of business, the said defendants threatened violence to the members of the crew in charge of said train, and certain of said defendants attempted to halt the progress of said train, and



threw stones, bricks, and other missiles at the said train, breaking the windows in the engine and caboose of said train, and inflicted bodily injury upon certain employees of the plaintiff while said employees were engaged in the performance of their occupation in operating a train in interstate commerce.

(k) That on January 2, 1942, the said defendants congregated in large numbers upon the highway leading from the Village of Bartonville, Peoria County, Illinois, to Canton, Fulton County, Illinois; and at a point near the switch track of the Allied Mills two of said defendants will-  
70 fully and maliciously threw glass whiskey bottles with benzine or gasoline into the cab of said engine drawing said train, causing the said substance to explode and set fire to the said locomotive engine and inflicting serious burns upon the engineer and other employees of the plaintiff on said engine.

(l) That on January 2, 1942, certain of said defendants threatened the employees of the plaintiff by advising them that if they, the said employees, took the train of the plaintiff out of Peoria to the western division of said railroad, that said employees would never get back, meaning and intending to commit bodily injury or harm to said employees in the event that they, the said employees, attempted to operate said train of the plaintiff from Peoria to Keokuk, Iowa; and at various points along said railroad right of way the said defendants congregated and made divers other threats to the employees of said plaintiff as they were attempting to operate said train from Peoria to Keokuk, Iowa; and said defendants traveled in automobiles along the highway adjacent to and parallel with said railroad, and at many points where said train was required to stop while in the county of Peoria, the said defendants continued their threats and acts of intimidation and violence and threw stones, bricks, clubs and other missiles at said train and the crew operating the same; and all of said acts found in this paragraph occurred before the said train described in the preceding paragraph reached the point near the switch track of the Allied Mills, when the attempt was made by certain of said defendants to burn said locomotive and injure the employees of the plaintiff therein riding; that all of the acts found to  
71 have been committed and set forth in this and preceding paragraphs resulted in the delay and interruption of the interstate commerce business of the said plaintiff,

and if the said unlawful acts and threatened continuation of similar unlawful acts is not restrained by this Court, the prosecution of the business of the plaintiff as an interstate carrier will be entirely prevented.

(m) That on December 29, 1941, the said defendants greased the high rail on a curve in the plaintiff's railroad track on New Philadelphia hill in the county of McDonough, in the State of Illinois, and that when the engine and train of the plaintiff reached said greased rail, the engine and train were caused to slip and slide; that the said defendants have threatened to continue similar acts of tampering with the rails and other equipment of the railroad, which, if continued, will result in derailment of trains of the plaintiff, damage to property and loss of life.

(n) That on December 30, 1941, the defendants unlocked switches and broke lamps at the following places upon the said railroad, to-wit: Sheldon, Webster, Leonard, Forrest, LaHouge, and Chatsworth, all stations in the State of Illinois; and that said switches had been turned so as to cause a train to leave the main track; and that because of the destruction or removal of the signals from said switches, the operators of the said trains would be unable to discover, or ascertain that said switches had been thrown; and that the continuation of said unlawful and unauthorized acts of the defendants in tampering with the switches or signals upon said switches would result in irreparable loss and damage to the property of the plaintiff and injury 72 to the persons operating said trains.

(o) That on December 31, 1941, one telegraph line of plaintiff's system near Mile Post 4-26, near Webster, Illinois, was cut, and the ends wrapped around two other wires, thereby preventing the operation of the telegraph system of the plaintiff used in the operation of its said railroad.

(p) That on December 29, 1941, on December 31, 1941, and on January 2, 1942, certain of said defendants threatened violence against the employees of certain other interstate connecting railroads while said interstate connecting railroads, were, by their said crews, trying to make delivery of certain cars of merchandise and other equipment to the plaintiff, which said cars so being delivered to the plaintiff might be transported on the railroad of the plaintiff, and which said cars then and there contained interstate commerce; that by reason of the unlawful acts of the said defendants and their threats of violence against

the crews of trains of other interstate connecting carriers, the delivery of many cars of interstate freight to the plaintiff by said connecting carriers was delayed and prevented, and the crews of said other roads feared to make delivery because of threat of injury to them, and fear that they would receive bodily harm from the hands of the said defendants so making said threats; that irreparable damage and injury will result to the plaintiff in the future unless the said defendants are restrained by injunction of this Court from further interference with the crews operating trains, or portions of trains belonging to other interstate carriers while said crews are attempting to make delivery of interstate commerce to plaintiff.

73 (q) That unlawful acts have been threatened and will be committed unless restrained, or have been committed and will continue to be committed unless restrained, as set forth in said verified complaint, by persons, associations or organizations named defendants to said complaint, making the threats or committing the unlawful acts;

(r) That substantial and irreparable injury to plaintiff's property will follow, including interference with the transportation of interstate commerce;

(s) That as to each item of relief granted, greater injury will be inflicted upon the plaintiff by the denial of the relief than will be inflicted upon the defendants by the granting of the relief;

(t) That plaintiff has no adequate remedy at law; and

(u) That public officers charged with the duty of protecting plaintiff's property are unable or unwilling to furnish adequate protection to said property or the employees of plaintiff.

(v) That on all of the dates charged in the verified complaint, the said plaintiff was engaged as a common carrier of interstate commerce; that the matter in controversy in this cause is of a civil nature, and exceeds, exclusive of interest and costs, a sum in excess of Three Thousand (\$3,000.00) Dollars.

(w) That said defendants, or some one, or more of them, at various times since the 29th day of December, 1941, and continuing up until the time of the filing of this complaint, have been guilty of acts of violence and threats of violence against various employees of the plaintiff

74 and have damaged and threatened to damage the property, trains and engines of the plaintiff; that various of said defendants have threatened that they will

continue such acts of violence; that employees of the plaintiff have been injured, as set forth in said complaint, and as found by this Court in the preceding paragraphs of the findings of this Court and this order; and the Court finds from the sworn evidence heard upon hearing of this application that there is danger of continued acts of violence and damage to the property of the plaintiff by said defendants, or some one or more of them; and that if notice of the application of plaintiff for this restraining order is given to the defendants that more acts of violence and damage to property will occur before hearing may be had; and the Court further finds that by reason of such acts of violence and continued threats of acts of violence, that a temporary restraining order should be issued, without notice to the defendants; that to give notice to said defendants of such application will result in continued and increased acts of violence and injury to employees of the plaintiff and damage to its property.

75 It Is Now, Therefore, Hereby Duly Ordered, Adjudged And Decreed By The Court that the defendants in said cause, namely Brotherhood of Railroad Trainmen, F. W. Coyle, Vice President of Brotherhood of Railroad Trainmen, and Brotherhood of Locomotive Firemen and Enginemen, W. C. Keiser, Vice President of Brotherhood of Locomotive Firemen and Enginemen, and W. J. Christoff, J. J. Gimming, Garland F. Brown, W. L. Brown, C. S. Gabbert, Hustler Wilson, Carl Roskamp, George Kneisley, Verd Kirk, H. J. Siebenthal, J. L. Fueger, Herman Reiman, G. L. Underwood, A. R. Overacker, H. E. Cole, H. O. Todd, Walter McMullen, W. E. Causey, Walter Kohtz, C. L. Brown, H. J. Dilley, O. W. Kirk, C. H. Kirk, Clinton Stetler, K. A. Feldt, Frank W. Lucas, Leo Totten, Delmar Newdigate and Arthur Brewster, and all persons to whom knowledge of this Temporary Restraining Order or any writ issued pursuant hereto shall come, be and each and all of them are hereby temporarily commanded, enjoined and restrained from:

(1) Assaulting or attempting to injure by violence, or otherwise, any of the employees or officers of the plaintiff desiring to return to work, or desiring to work for the plaintiff;

(2) Intimidating or attempting to intimidate, by force or violence or personal assault, employees or officers of the plaintiff to keep them from returning to work and con-

tinuing their work with the plaintiff, or those desiring to enter the employ of the plaintiff;

(3) Congregating on picket lines in the vicinity of the premises of the plaintiff in numbers in excess of the number fixed by order of the Court, and by threats of violence and acts of violence preventing or attempting to prevent employees or officers of the plaintiff, or those desiring 76 to work for the plaintiff, from entering or reaching the premises of the plaintiff.

(4) Interfering or attempting to interfere with the plaintiff in the operation of its railroad, or the receipt of, transportation or delivery of interstate freight consigned to it or its patrons from points without the State of Illinois to or through points within or without the State of Illinois, and from in any way interfering with the operation of plaintiff's railroad.

(5) From cooperating, confederating and conspiring for the purpose of in any way interfering with the plaintiff in the handling of war and national defense material, including arms, armament, ammunition, livestock, stores of clothing, food, foodstuffs, fuel, supplies, munitions and all other articles of whatever description, and any part or ingredient thereof, or for use in or in connection with the producing, manufacturing, repairing, storing, mining, extracting, distributing, loading, unloading, or transportation of any of the materials or other articles hereinabove mentioned, or any part or ingredient thereof, and from interfering with the handling of any and all material on its trains consigned or moving in interstate commerce.

(6) From congregating at or near the premises of the plaintiff for the purpose of preventing or attempting to prevent, by threats or intimidation or violence, or threats of violence, any person from engaging in or remaining in the employ of the plaintiff.

(7) Singly or in combination or in conspiracy with each other, or with others, preventing or attempting to prevent by threat of force or intimidation or by the use of profane, insulting or abusive language, or by force and violence or threat of violence, to any person being employed by the plaintiff, or engaged in or remaining in the employment 77 of the plaintiff or in performing any business, labor or duties for the plaintiff.

(8) By violence or threat of violence, coercing or attempting to coerce any person in the employ of the plain-



tiff, or about to enter the employ of the plaintiff, not to remain in the employ of the plaintiff.

(9) In any manner interrupting, obstructing or interfering by force or intimidation or by violence or threats of violence with the movement or passage of any person toward, to, upon or from said property of the plaintiff.

(10) In any manner interrupting, obstructing or interfering by force or intimidation or by violence or threat of violence with the movement or passage or shipment or consignment of freight or raw material from points without the State of Illinois to points within the State of Illinois, or from points within the State of Illinois to points without the State of Illinois, or from points without the State of Illinois through the State of Illinois to points without the State of Illinois, or the passage or movement of trains of the plaintiff carrying such interstate commerce.

(11) By violence or threat of violence, molesting or threatening any member of the family of any employee or officer, or by violence or threat of violence or injury coercing any employee or officer of the plaintiff, or damaging the home or residence of any member of the family of any such employee or officer.

(12) Congregating in any group or groups in the vicinity of the plaintiff's property for the purpose or with the intention of committing any act of violence upon any employee or officer of the plaintiff or any one desiring to enter the employ of the plaintiff.

78 (13) Firing any shot or missile, rock or stone or club at, toward, or against or upon the property of the plaintiff or any employee or officer of the plaintiff or those desiring to enter its employ, or by force or violence damaging the property of the plaintiff or interfering by force or violence with plaintiff's business or its customers and the use and enjoyment by the plaintiff of its said railroad, and the carrying on of its business and the movement of its trains, engines, and cars for the transportation of interstate commerce.

(14) In any way by force or violence or threat of violence interfering with, obstructing or preventing the operation of plaintiff's railroad in the handling of interstate commerce and from in any way by force or violence or threat of force or violence seeking to prevent employees of the plaintiff or those desiring to enter its employ from continuing and working as employees of the plaintiff.

(15) Violence or threats of violence or damaging or

attempting to damage or injure any of the property of the plaintiff used in the transportation of Interstate Commerce including any other property of the plaintiff.

(16) From destroying or attempting to destroy, unlocking, opening or disarranging switches of the plaintiff and damaging, injuring or changing signals on the switch stands of the plaintiff so as to in any way endanger the movement of a train over the tracks of the plaintiff and from damaging, cutting, breaking or otherwise interfering with the telegraph system of the plaintiff, or any of other property used in connection with the operation of its trains in the transportation of freight in interstate commerce.

79 (17) From tampering with, damaging or destroying, or attempting to damage or destroy, any portion of the roadway, ballast, tie and track structure, bridge, culvert, building, signal, telegraph line, locomotive, car, or any other building, structure, piece of machinery or equipment used by plaintiff in its business.

This temporary restraining order shall be and remain in force for a period of five (5) days unless sooner modified or changed by the order of the Court.

The plaintiff shall file an undertaking with adequate security in an amount in the sum of Three Thousand (\$3,000) Dollars, conditioned that it recompense those enjoined for any loss, expense or damage caused by the issuance of this temporary restraining order, including all reasonable costs together with reasonable attorneys' fees and expenses of defense against the granting of this temporary restraining order, if it shall be held to have been improvidently granted by the further order of this Court.

Nothing herein contained shall be construed to prevent (1) ceasing or refusing to perform any work to remain in any relation of employment; (2) becoming or remaining a member of any labor organization or of any employer organization regardless of any such undertaking or promise as is described in Section 103 (Act March 23, 1932, Chapter 90, Sec. 3, 47 Stat. 70 (29 U. S. C. A. Par. 103); (3) paying or giving to or withholding from any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance or other moneys or things of value; (4) by all lawful means aiding any person participating or interested in any labor dispute

*Temporary Restraining Order.*

who is being proceeding against in or in prosecution  
 80 of any action or suit in any court of the United States  
 or in any State; (5) giving publicity to the existence  
 of or the facts involved in any labor dispute, whether by  
 advertising, speaking, patrolling, or by any other method  
 not involving fraud or violence; (6) assembling peaceably  
 to act or to organize to act in promotion of their interests  
 in a labor dispute; (7) advising or notifying any person  
 of an intention to do any of the acts heretofore specified  
 in this paragraph; (8) agreeing with any other person  
 to do or not to any of the acts heretofore in this paragraph  
 stated; and (9) advising, urging or otherwise causing or  
 inducing without fraud or violence, the acts heretofore in  
 this paragraph specified, regardless of any such under-  
 taking or promise as is described in Section 103 of this  
 chapter.

Nothing herein shall prevent the defendants from hav-  
 ing not to exceed Three (3) persons act as pickets at each  
 of the points of entrance to the properties and premises  
 of the plaintiff, but said pickets shall be unarmed and shall  
 not carry or display, clubs or other instruments of violence,  
 and shall not at any time resort to violence or threats of  
 violence in preventing or attempting to prevent employees  
 or others entering or leaving the premises of the plaintiff,  
 and said pickets shall not by violence or threat of violence  
 intimidate or attempt to intimidate any person in  
 81 having free access, ingress and egress to and from  
 the premises of the plaintiff.

Application for temporary injunction is set for hearing  
 at Peoria, Illinois, on January 8th, A. D. 1942, at 10 o'clock,  
 A. M.

J. Leroy Adair,

*Judge.*

Signed this 3rd day of Jan. 1942 at 3:50 P. M.

(Seal)

J. Leroy Adair.

Indorsed: Filed Jan. 3, 1942 at 3:50 P. M. G. W.  
 Schwaner, Clerk.

82 And afterwards, to-wit: on the 3rd day of January,  
 A. D. 1942; a certain Bond was filed in the office of  
 the clerk of said court and approved by the Court, which  
 said Bond and Approval was and is in the words and  
 figures, following, to-wit:

83 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—P-149) • •

Filed  
Jan. 3,  
1942.

Know All Men By These Presents, That Toledo, Peoria & Western Railroad, as principal, and Geo. P. McNear, Jr., as surety, are held and firmly bound unto the defendants in the above entitled cause in the penal sum of Three Thousand Dollars, for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and firmly by these presents.

Witness our hands and seals this 3rd day of January, A. D. 1942:

The condition of the above obligation is such that whereas, Toledo, Peoria & Western Railroad, as plaintiff in the above entitled cause has filed its complaint against the defendants and has made application to the court for the issuance of a temporary restraining order against the defendants pending the hearing of the application for a temporary injunction; and

Whereas, the District Court of the United States for the Southern District of Illinois, Northern Division, has issued its temporary restraining order pending the hearing upon the application of the plaintiff for a temporary injunction on condition, however, that said plaintiff shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined or restrained for any loss, expense, or damage caused by the improvident or erroneous issuance of such restraining order, including all reasonable cost (together with a reasonable attorney's fee) and expense  
84 of defense against such temporary restraining order or against the granting of any injunctive relief sought in this proceeding and subsequently denied by the court.

Now, Therefore, if said Toledo, Peoria & Western Railroad shall well and truly recompense the defendants enjoined or restrained for any loss, expense, or damage caused by the improvident or erroneous issuance of such restraining order, including all reasonable costs (together with a reasonable attorney's fee) and expense against such restraining order or against the granting of any injunctive relief sought in this proceeding and subse.

quently denied by the court; then this obligation to be void, otherwise to remain in full force and effect.

The principal and surety herein submit themselves to the jurisdiction of the court for the purpose of enforcing the conditions of this bond if it shall be held that the granting of the temporary restraining order was improvident or erroneous or if the granting of injunctive relief sought in this proceeding is subsequently denied by the court.

Toledo, Peoria & Western Railroad,  
By /s/ Geo. P. McNear, Jr.,  
*President.*

(Corporate Seal)

Attest:

/s/ Louis Rider,  
*Assistant Secretary.*

/s/ Geo. P. McNear, Jr. (Seal)

85 State of Illinois, }  
County of Peoria. } ss.

I, Esther M. Schulthes, a Notary Public in and for said county and state aforesaid; do hereby certify that Geo. P. McNear, Jr., President of Toledo, Peoria & Western Railroad, and personally known to me to be said officer, appeared before me this day in person and acknowledged that he signed, sealed and delivered said instrument as the free and voluntary act of said Toledo, Peoria & Western Railroad for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of January, A. D. 1942.

/s/ Esther M. Schulthes,  
*Notary Public.*

State of Illinois, }  
County of Peoria. } ss.

I, Esther M. Schulthes, a Notary Public in and for said county and state aforesaid, do hereby certify that Geo. P. McNear, Jr.; personally known to me to be the same person who signed the above and foregoing instrument as surety, appeared before me this day in person and acknowledged that he signed, sealed and delivered said



instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 3rd day of January, A. D. 1942.

/s/ Esther M. Schulthes,  
*Notary Public.*

(Notary Seal)

86 State of Illinois, }  
County of Peoria. } ss.

Geo. P. McNear, Jr., being first duly sworn, deposes and says that he is the owner of real and personal property in the County of Peoria and State of Illinois of the value in excess of Ten Thousand Dollars (\$10,000.00) over and above all encumbrances, exemptions, and liens; that he makes this affidavit for the purpose of qualifying as surety in the above and foregoing bond.

/s/ Geo. P. McNear, Jr.

Subscribed and sworn to before me this 3rd day of January A. D. 1942.

/s/ Esther M. Schulthes,  
*Notary Public.*

(Notary Seal)

On the back thereof appears the following:

1-3-42 Said bond approved. /s/ J. Leroy Adair, Judge.

Endorsed: Filed Jan. 3, 1942. G. W. Schwaner, Clerk.

87 And afterwards, to-wit: on the 5th day of January, A. D. 1942, a certain Order as to Service of Notice on Public Officials of Application for Temporary Injunction, was filed in the office of the clerk of said court and entered of record in said cause, together with the Certificate of the Clerk of Mailing Printed Certified Copies of Temporary Restraining Order, which said Order and Certificate were and are in the words and figures following, to-wit:

Entered  
Jan. 5,  
1942.

88 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—P-149) • •

**ORDER AS TO SERVICE OF NOTICE ON PUBLIC OFFICIALS OF APPLICATION FOR TEMPORARY INJUNCTION.**

This cause now coming on to be heard upon the motion of the plaintiff by its attorneys for an order directing the manner of service of notice upon Public Officials of the time of hearing of application for temporary injunction; and the Court now being fully advised in the premises, upon consideration thereof, It Is Hereby Ordered And Directed that the Clerk of this Court mail a printed Certified copy of the Temporary Restraining Order heretofore issued herein on January 3, 1942, which Order sets the application for temporary injunction for hearing on January 8, 1942 at ten a. m., to the following Public Officials:

Sheriff of Iroquois County, Watseka, Illinois  
 Sheriff of Ford County, Paxton, Illinois  
 Sheriff of Livingston County, Pontiac, Illinois  
 Sheriff of McLean County, Bloomington, Illinois  
 Sheriff of Woodford County, Eureka, Illinois  
 Sheriff of Tazewell County, Pekin, Illinois  
 Sheriff of Peoria County, Illinois  
 Sheriff of Fulton County, Lewistown, Illinois  
 Sheriff of McDonough County, Macomb, Illinois  
 Sheriff of Hancock County, Carthage, Illinois  
 Sheriff of Henderson County, Oquawak, Illinois

89 It Is Further Ordered And Directed that the Clerk also mail copies of printed Temporary Restraining Order to the Chief of Police of the Following cities located on the line of the plaintiff's railroad:

Sheldon, Illinois	East Peoria, Illinois
Watscka, Illinois	Peoria, Illinois
Crescent City, Illinois	Bartonville, Illinois
Gilman, Illinois	Village of Kingston Mines, Ill.
Piper City, Illinois	Glasford, Illinois
Chatsworth, Illinois	Canton, Illinois
Forrest, Illinois	Cuba, Illinois
Firbury, Illinois	Smithfield, Illinois
Chenoa, Illinois	Bushnell, Illinois
Gridley, Illinois	Good Hope, Illinois

*Certificate of Mailing.*

65

El Paso, Illinois	Sciota, Illinois
Secor, Illinois	Blandinsville, Illinois
Eureka, Illinois	LaHarpe, Illinois
Keokuk, Iowa	Ferris, Illinois
Washington, Illinois	Elvaston, Illinois
Hamilton, Illinois	Warsaw, Illinois

J. Leroy Adair /s/  
Judge.

**Certificate of Mailing Printed Certified Copies of  
Temporary Restraining Order.**

I, G. W. Schwaner, Clerk in and for the District Court of the United States for the Southern District of Illinois, hereby certify that I have this day deposited in the United States Post Office at Peoria, Illinois, printed copies of the certified copy of Temporary Restraining Order, addressed to the following, in accordance with the foregoing order of Court:

Sheriff of Iroquois County, Watseka, Ill.; Sheriff of Ford County, Paxton, Ill.; Sheriff of Livingston County, Pontiac, Illinois; Sheriff of McLean County, Bloomington, Ill.; Sheriff of Woodford County, Eureka, Ill.; Sheriff of Tazewell County, Pekin, Ill.; Sheriff of Peoria County, Ill.; Sheriff of Fulton County, Lewistown, Ill.; Sheriff of McDonough County, Macomb, Ill.; Sheriff of Hancock County, Carthage, Ill., and Sheriff of Henderson County, Oquawka, Ill., and to the Chief of Police in each of the following cities: Sheldon, Ill., Watseka, Ill., Crescent City, Ill., Gilman, Ill., Piper City, Ill., Chatsworth, Ill., Forrest, Ill., Fairbury, Ill., Chenoa, Ill., Gridley, Ill., El Paso, Ill., Secor, Ill., Eureka, Ill., Keokuk, Iowa, Washington, Ill., Hamilton, Ill., East Peoria, Ill., Peoria, Ill., Bartonville, Ill., Village of Kingston Mines, Ill., Glasford, Ill., Canton, Ill., Cuba, Ill., Smithfield, Ill., Bushnell, Ill., Good Hope, Ill., Sciota, Ill., Blandinsville, Ill., LaHarpe, Ill., Ferris, Ill., Elvaston, Ill. and Warsaw, Ill.

In witness whereof I hereunto set my hand and affix the seal of this Court at Peoria, Illinois, this 5th day of January, A. D. 1942.

G. W. Schwaner,  
Clerk.

/s/ Daul W. McCann,  
Deputy Clerk.

(Seal)

Endorsed: Filed Jan. 5, 1942. G. W. Schwaner, Clerk.

Entered  
Jan. 8,  
1942.

90 And afterwards, to-wit: on the 8th day of January, A. D. 1942, at 3:15 o'clock p. m., a certain Order Extending and Continuing in Force Temporary Restraining Order was filed in the office of the Clerk of said Court and entered of record in said cause, which said Order was and is in the words and figures following, to-wit:

91 IN THE UNITED STATES DISTRICT COURT.

\* \* (Caption—P-149) \* \*

**ORDER EXTENDING AND CONTINUING IN FORCE  
TEMPORARY RESTRAINING ORDER.**

This cause now coming on to be heard upon the application of the plaintiff for a temporary restraining injunction as prayed in the complaint, and for an order extending and continuing in force the temporary restraining order entered herein January 3, 1942; and the court having heard a portion of the evidence offered on behalf of the plaintiff in support of its application for temporary injunction on this date and it appearing to the court that the hearing on the application for temporary injunction cannot be concluded and a decision rendered thereon before the expiration of said temporary restraining order heretofore issued, finds that it is necessary that said temporary restraining order be extended and continued in full force and effect for a period of Nine (9) days from this date; and counsel for defendants having objected to the extension of said temporary restraining order and the court having overruled said objection.

Upon Consideration Thereof, It Is Ordered, Adjudged And Decreed that the temporary restraining order heretofore entered herein, under date of January 3, 1942  
92 at 3:50 o'clock p. m., be and the same is hereby extended and continued in full force and effect until January 17th, 1942, pending the completion of the hearing of plaintiff's application for temporary injunction herein and the decision of this court upon said application.

This order is entered extending and continuing in full force and effect said temporary restraining order because of the inability of the court to complete the hearing on the

application of the plaintiff for a temporary injunction and the decision of the court on such application.

/s/ J. Leroy Adair,  
Judge.

Entered: January 8, 1942 at 3:15 o'clock p. m.

Read by Louis F. Knoblock Jan. 8, 1942 at 2:15 p. m.  
one of the attys for all of the defendants.

Endorsed: Filed Jan. 8, 1942, at 3:15 o'clock p. m.  
G. W. Schwaner, Clerk.

98 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—P-149) \* \*

Appearances:

John M. Elliott, Esq., Clarence W. Heyl, Esq., Ap-  
pearing for the plaintiff.

Cassidy, Knoblock & Sloan, by Louis F. Knoblock,  
Esq., George Donaldson, Esq., Appearing for the  
defendants.

Be It Remembered And Certified that heretofore, to wit,  
on the 8th, 9th, 10th, 12th, 13th, 14th, 15th, 16th and 19th  
days of January, A. D. 1942, they being regular days of  
the October, 1941, Term of said court aforesaid, before  
the Honorable J. Leroy Adair, one of the Judges of said  
Court, the foregoing cause come on for trial, and the  
following proceednigs were had, to wit:

99

# EXHIBITS.

(Continued.)

Admitted

Plaintiff's Exhibit 29—Telegram	1043
30—Telegram	1043
31—Telegram	1043

Marked for identification.

Plaintiff's Exhibit 32—Cloth or cover	1220
33—Box of rocks, etc.	1220



100

10 o'clock A. M.  
January 8, 1942.

The Court: Any preliminary matter, gentlemen?

Are you ready to proceed?

Mr. Knoblock: Well, yes, there are some preliminary matters. One that I think we ought to straighten out definitely is the matter of the stipulation that Mr. Elliott and I talked about over the telephone about certain documents involving certain defendants.

The Court: Have you such a stipulation?

Mr. Knoblock: We have none written. We would like to make that orally at this time.

Mr. Elliott: It wasn't possible to get all of the documents ready. I told them they could file them later.

The Court: Answer or motion?

Mr. Elliott: Yes.

The Court: State the stipulation to the reporter.

Mr. Elliott: We want to know what it is.

Mr. Knoblock: Naturally we are going to file some affidavits, and we are going to file some motions and answers.

(Discussion off the record.)

Mr. Knoblock: It is stipulated by and between the parties hereto, through their respective attorneys, that all the defendants herein shall be permitted to file answers and appropriate motions subsequent to the hearing of the oral testimony taken in said cause as soon as is reasonably convenient, or upon order of the court.

Mr. Elliott: I would like to know what you mean by 101 "appropriate motions." I would like for you to specify the motions.

Mr. Knoblock: I will tell you this: We will file motions on behalf of various defendants that no allegations are sufficient against them to state a cause of action.

Mr. Elliott: That will be in the nature of a demurrer?

Mr. Knoblock: It is in our Practice Act.

Mr. Elliott: Under the Practice Act?

Mr. Knoblock: And I shall file answers denying those portions of the complaint that are properly deniable, and admitting those parts that should be properly admitted. I shall file further motions that the entire complaint is insufficient in law and that it is defective, and I will file

further motions requesting that the temporary restraining order be lifted in accordance with the law, also that the other injunctions prayed for be denied on behalf of all defendants.

(Discussion off the record.)

Mr. Heyl: We will have to have something more than that stipulation, and that is this: That the parties agree that during the pendency of this case and the time intervening until the case is decided that the restraining order shall be continued in force.

Mr. Knoblock: During the pendency of this hearing? Oh, no!

Regardless of how many written motions I may have had on file this morning, if this hearing continues 102 for five or six days or two weeks, your temporary restraining order goes off.

The Court: I don't so understand it. I would have to have some authorities.

Mr. Heyl: Oh no! The court has the right to enter the order.

The Court: I think it holds until such time as the matter is decided. That is why you should get your answer on file. I can't decide it for you with your stipulation until you file some answer.

Mr. Elliott: The temporary restraining order will be continued throughout the hearing.

The Court: I don't think there is any question about it. (Discussion off the record.)

The Court: I have also understood that it is extended within the period of the hearing. That is why I have insisted on it being heard in the five days, but I will extend it during the time of the hearing.

Mr. Heyl: Of course, if this stipulation that he wants, after the hearing of oral evidence that he may have the right to file answers and motions, then the order shall be extended over that period.

Mr. Knoblock: While we are hearing this case, it seems it will involve such time I wouldn't be surprised that my answers and motions were on file during the time of the hearing.

The Court: It will be extended during the time of hearing. If your pleadings aren't on file, it will be extended. 103 tended.

Mr. Heyl: Your stipulation should be withdrawn.

Mr. Knoblock: What stipulation? What are you talking about?

Mr. Heyl: You asked after the hearing you shall have the right to file answers and motions and affidavits, and we are willing to do that but, if we do, we want the restraining order extended to cover that period, whatever it may be.

The Court: It would seem during the time of this hearing it will be extended.

Mr. Knoblock: I think the proper time to take that up is at the conclusion of this hearing.

Mr. Elliott: We will withdraw from the stipulation.

Mr. Knoblock: The court can decide that after the hearing of this evidence.

Mr. Heyl: We don't want to be bound by this stipulation.

The Court: I think it is within the power of the court to extend it until it is filed.

Mr. Elliott: That's all we care for.

Mr. Heyl: We are willing to accommodate him, but we want this restraining order extended.

The Court: It seems you are quibbling about something you can avoid.

Let's call the witnesses.

Mr. Knoblock: Another thing I would like to do is make a motion that all witnesses in this case who are not parties defendant or plaintiff be excluded from the court room.

104 Mr. Heyl: We want to object to that. It is a hardship on these witnesses because there is no place in this building to put them. There isn't any reason for the motion unless he shows some ground for it.

The Court: I understand he is entitled to the motion. It is a hardship on all of us, and I don't know where I will put them, but I will grant it.

Mr. Marshal: can you use the jury room for this purpose? There are two sets of witnesses.

Mr. Elliott: We may want to use Mr. McNear. He should be present, and Mr. Sprague, who is an attorney.

The Court: They may remain. I will permit that. All of you who have been called as witnesses will remain outside of the court room until you have testified. After you have testified, you may come back and sit in the court room.

(Discussion off the record.)

Mr. Knoblock: There are a number of T. P. & W. men who are not parties defendant. We don't know whether they are witnesses or not. I request that all T. P. & W. men, whether they have been notified to testify, unless they are actual defendants, I want them out of the room.

The Court: You mean all former employees of the T. P. & W. are to remain outside the room whether they have been subpoenaed or not? That is your request?

Mr. Knoblock: That is right, except those who are actually defendants.

105 Mr. Elliott: And Mr. Sprague and Mr. McNear may stay.

Mr. Heyl: Mr. Best, Mr. Sprague and Mr. McNear. Mr. Best is an officer.

The Court: They may remain.

Mr. Elliott: Mr. Gifford is trainmaster.

The Court: They may remain.

(Discussion off the record.)

The Court: Call your witnesses. I take it one of you had better remain back at the door. I don't know how you will arrange it.

Mr. Heyl: I would like to call Mr. F. W. Coyle as an adverse witness for cross-examination.

The Court: All right!

FRANK W. COYLE, called as an adverse witness by the plaintiff, and having been first duly sworn, testified as follows, in answer to:

*Cross-Examination by Mr. Heyl.*

Q. What is your name?

A. Frank W. Coyle;—

Q. Where do you live?

A. —C-o-y-l-e. St. Paul, Minnesota.

Q. And what is your business or profession?

A. Vice president, Brotherhood of Railroad Trainmen.

Q. And is that the national organization?

A. International organization.

106 Q. International organization?

A. Yes.

Q. And how long have you been in Peoria, or how long were you in Peoria prior to December 28, 1941?

A. I arrived in Peoria the evening of December 12.

Q. And were you in Peoria prior to that time?

A. Yes, I was.

Q. When?

A. November 16 I arrived prior to that time.

Q. But you have been here continuously since the last time you arrived here, is that right?

A. Beg your pardon?

Mr. Heyl: Read it to him.

(Question read by reporter.)

A. Continually since December 12?

Q. Yes.

A. Yes, sir.

Q. What have you been doing since you have been in Peoria?

A. Representing the Brotherhood of Railroad Trainmen as the vice president.

Q. Where have you been residing since you came here?

A. At the Jefferson Hotel.

Q. Is there any other officer of the Brotherhood, your Brotherhood, here in Peoria?

A. Do you mean representatives of our Grand Lodge?

Q. Representatives of your union or Brotherhood.

A. Well, we have various officers. We have general chairmen of the different railroads.

Q. I am asking you if they are here in Peoria, any of the national officers, in addition to yourself.

107 A. May I have the question cleared up, please? You first asked if there was any officers of the Brotherhood.

Q. If you can't understand it, I will ask you another question. Are there any other officers of your international organization here in Peoria?

A. None.

Q. Have there been since you arrived on December 12, 1941?

A. None.

Q. Now, do you know one of the defendants, W. C. Keiser?

A. Yes, sir.

Q. What is his connection or business?

A. Mr. Keiser is vice president of the Brotherhood of Locomotive Firemen and Enginemen.

Q. Do you know when he arrived in Peoria?



A. No, I don't.

Q. Has he been here since you arrived?

A. Yes, sir.

Q. Was he here when you arrived?

A. No, sir.

Q. When did he arrive?

A. He arrived—

Mr. Knoblock: I object as having been asked and answered. He stated he didn't know.

The Court: I think he stated he didn't know, but he may answer.

A. He arrived several days after I arrived.

Q. What has he been doing since he came to Peoria?

A. I don't get your question. In what respect?

Q. Have you been in contact with him each day?

A. Yes, sir.

108 Q. What have the two of you been doing together since he arrived in Peoria?

A. ~~Handling~~ the respective affairs of our respective organizations.

Q. And he and you have directed the strike that is now on, and was instituted on the 28th day of December, 1941?

A. Yes, sir.

Q. And had full charge of it, haven't you?

A. Well, we are responsible to our chief executives and report to them.

Q. And you have been directing the strike, and what was done in connection with the strike, have you?

A. Yes, sir.

Q. And the strike was called by your two Brotherhoods?

A. Yes, the strike was called by our two Brotherhoods, a legal strike.

Q. Where does Mr. Keiser reside since he came to Peoria?

A. Jefferson Hotel.

Q. And that is where you and Mr. Keiser have had your headquarters and offices, is that right?

A. Yes, sir.

Q. Have you had any lieutenants or assistants in Peoria in the employ of your or the other Brotherhoods?

A. Well, I just don't understand what you mean by the name of "lieutenants."

Q. Well, anyone in your employ. We will leave out

the lieutenants. Did you have anyone in your employ or under your direction?

A. No. No, sir.

Q. No one at all?

A. No, sir.

109 Q. I will ask you if you had in your employ or under your direction a man in Peoria who was commonly referred to as "Red"?

A. No, sir. In my employ?

Q. Or under your direction or under the direction of Mr. Keiser, that was operating and working in connection with this strike?

A. Referred to as "Red"?

Q. Do you know a man that had something to do with this strike that was commonly referred to as "Red"?

A. There is an employee of the T. P. & W. referred to as "Red."

Q. Former employee?

A. I said "employee."

Q. Is he now out on strike?

A. Yes, sir.

Q. Did you have a conversation with A. E. Stonebock, the sheriff of Peoria County, with reference to that man?

A. Stonebock of what county?

Q. Sheriff of Peoria County.

A. No, sir.

Q. At no time?

A. I have never met Sheriff Stonebock.

Q. I will ask you if you ever had a conversation with the sheriff of Peoria County?

A. No, sir.

Q. Or with any of his deputies?

A. No, sir.

Q. About this man "Red"?

A. No, sir.

Q. Did you have a conversation on or about the 29th day of December, 1941, with one J. H. Lowry?

110 Mr. Knoblock: Let's get that date again.

Mr. Heyl: 29th of December, 1941.

Mr. Knoblock: Who?

Mr. Heyl: J. H. L-o-w-r-y.

A. I don't recall that I know a J. H. Lowry.

Q. Did you or not, about 8 o'clock the evening of December 29, 1941, have a conversation with J. H. Lowry

with reference to the movement of ice into the plant of the plaintiff in this case?

A. Well, now, I have had numerous telephone conversations with people that I have never met in a formal way or introduced to. Now, there may be a man by that name, but I don't recall of him calling me up.

Q. Did you have a conversation with him with reference to getting the permission to move ice for the Transit Ice Company which was located on the T. P. & W. property through the picket lines?

A. I remember a conversation with some party (I don't recall his name) concerning the movement of ice.

Q. At that time, you told Mr. Lowry, did you not, or whoever the man was, you would not permit this company, the Transit Ice Company, to move ice through the picket line?

A. I told him I wouldn't give him permission to go through the picket line. He wanted me to authorize him or let him go through. He said it wasn't his policy to go through picket lines, and he asked me to give him a letter or permission, which I declined to do.

Q. After you said all that, the substance was you said he couldn't do it?

Mr. Knoblock: I object. The answer speaks for itself.

111 The Court: I think I will sustain that. He told him he wouldn't give him a letter.

Q. You were out at the premises of the plaintiff in this case on December 28, 1941, were you not? I mean the yards, and the road leading to the yards.

A. Yes, I was.

Q. Now, you arranged for the picket lines, did you not?

A. I instructed the general chairman of the Brotherhood of Railroad Trainmen to take care of placing men on the picket lines.

Q. What is his name?

A. D. G. Newdigate.

Q. Were you out there that day to see that he carried out your orders?

A. I went over the territory prior to 6 P. M. at night.

Q. You observed the pickets there that day, did you?

A. I observed the pickets there around about 9 o'clock, yes.

Q. Sunday morning, December 28, 1941?

A. I would say it was around 10 o'clock at night.

Q. Was that 10 o'clock at night, you mean?

A. Yes.

Q. How many were there?

A. I couldn't say. I just drove by. I didn't stop.

Q. What is your best judgment?

A. About six or eight.

Q. You were there on December 29, 1941, were you not?

A. I don't recall whether I went out on the picket lines December 29.

Q. Were you there on December 30, 1941?

A. I don't recall definitely whether I did or not.

112 Q. How many picket lines did you establish?

A. We established a picket line at the lane leading into the yard and around house. We established a picket line at the viaduct, what is called the "viaduct." We established a picket line at the freight house.

Q. Do you know how many men were placed on each of these picket lines?

A. As I recall, there was about six or eight men placed on the line.

Q. On each line, is that right?

A. I said as I recall, yes.

Q. Now, you also, did you not, established pickets to follow trains?

A. No, sir.

Q. You knew, as a matter of fact, that the men on strike were following trains, did you not?

A. No, sir.

Q. Did you observe how the men on the picket lines were armed?

A. No, sir.

Q. They carried clubs, didn't they?

A. No, sir.

Q. At no time?

A. I didn't see any of the pickets carrying clubs.

Q. Were you there each day?

A. No, I didn't go out each day; no, sir.

Q. Did you direct the pickets to stop persons who were seeking to transact business with the plaintiff from going into the premises of the plaintiff from the public highway leading to the premises?

A. No, sir.

113 Q. Well, why did you not permit this ice company, then, to go through the picket line?

A. I had no control over that man.

Q. But you refused permission for him to go through, didn't you?

A. I didn't have authority to give him permission to go through.

Q. Well, what did you tell Mr. Lowry?

A. As I recall, I told him it was up to him, if he wanted to he could go through, if he didn't he didn't have to. He said it wasn't his policy to go through picket lines, he was a union man.

Q. You told him, did you not, at that time that you would not let anyone through, and that the Transit Iceing Company should buy ice somewhere else for its customers or to take to its customers?

A. I don't recall telling him that at all.

Q. Would you say you did or did not say that?

A. I don't recall.

Q. Did this man come to the hotel, this same individual, about 11:15 on December 30, 1941, to see you?

A. No, sir.

Mr. Heyl: That's all.

The Court: Do you care to cross-examine?

Mr. Knoblock: Not at this time, ~~no~~.

Mr. Heyl: I ask Mr. Keiser to take the stand. We call him as an adverse witness, one of the defendants, for the purpose of cross-examination.

114 W. C. KEISER, called as an adverse witness by the plaintiff, and having been first duly sworn, testified as follows, in answer to:

*Cross-Examination by Mr. Heyl.*

Q. What is your name?

A. W. C. Keiser.

Q. And where do you live?

A. Topeka, Kansas.

Q. What is your business or occupation?

A. I am vice president of the Brotherhood of Locomotive Firemen and Enginemen.

Q. How long have you been residing in the City of Peoria?

A. The last time I returned here on December 27.

Q. When were you here before that?



A. I left here on December 20, having been here since November 3.

Q. What was your business here in Peoria?

A. Handling the affairs of the Brotherhood of Locomotive Firemen and Enginemen.

Q. To direct this strike?

A. Handling the affairs of the men on the Toledo, Peoria & Western Railroad.

Q. And you were directing the strike, were you not?

A. Under the direction of my international president.

Q. The international president wasn't here, was he?

A. No, sir.

Q. You were the representative of this Brotherhood in Peoria at the various times you were here?

A. That is correct.

115 Q. And you were personally directing the strike?

A. Under the direction of my international president.

Q. And you and the witness who just left the stand, Mr. Fred W. Coyle, were working together in connection with this strike, is that right?

A. Yes, sir.

Q. And do you recall on December 30, 1941, J. H. Lowry coming to you at the Jefferson Hotel in the City of Peoria, and inquiring for Mr. Fred W. Coyle?

A. I don't know anybody by that name.

Q. Do you remember a man accompanying this Mr. Lowry by the name of Schwagmeyer?

Mr. Knoblock: How do you spell that?

Mr. Heyl: S-c-h-w-a-g-m-e-y-e-r.

A. I don't recall the name.

Q. Do you recall the two men coming?

A. There were two men that talked to me, yes, sir.

Q. And you took them to your room in the Jefferson Hotel, did you not?

A. They came to my room.

Q. Your and Mr. Coyle's room? In the same room in the hotel?

A. No, sir.

Q. Do you have a joint room for a business office?

A. No, sir.

Q. Now, they explained to you, did they not, that the ice company was an independent company, and separate from the plaintiff, and that the only road into the plant

where they had their business was the one also used by the T. P. & W. leading from the hard road to the plant?  
116 They told you that, did they not?

Mr. Knoblock: Wait a minute! I want to object to that for the reason this plaintiff can not complain of any of those matters. The only one would be the ice company.

The Court: What is the purpose?

Mr. Heyl: The purpose is to show that this man and the former one directed the operation of everything that was done, including the stopping of trucks belonging to private individuals who have no connection with this company.

We will follow that up by showing what was done in the way of violence to these trucks who tried to drive into these premises. This ice plant happens to be located at the yards of the T. P. & W.

Mr. Knoblock: We submit the ice company, and not this plaintiff,—

The Court: I don't see what interest the plaintiff would have in even violence to somebody else.

Mr. Heyl: The purpose is to show the extent to which these men interfered with the business of this plaintiff.

The Court: This wasn't the business of this plaintiff.

Mr. Heyl: But this tenant had no way of reaching its premises except by going through this highway.

Mr. Knoblock: It would be the tenant's complaint, not the plaintiff's complaint.

The Court: I think he may answer. I don't see the materiality, but he may answer.

117 (Question read by reporter.)

A: I don't recall that they did.

Mr. Knoblock: I move the answer be stricken.

The Court: It may stand.

Q. You told them, did you not, you would not permit any trucks of this independent ice company, the Transit Ice Company, to use that highway leading from its premises to the hard road?

A. I did not.

Mr. Knoblock: I object as not tending to prove any issues.

The Court: He answered and said he didn't.

I don't see how you are hurt. In cases of this sort, it doesn't seem to affect the record.

Q. I will ask you to tell the court what you had to do with directing or the refusal of permitting carriers in Peoria to deliver cars or freight to the plaintiff.

Mr. Knoblock: I object to that.

The Court: Read the question.

(Question read by reporter.)

The Court: I think he may answer that to show his connection.

A. I had nothing to do with directing men from other railroads.

Q. What did you do about it? What did you have to do with it. That is what I want to know.

Mr. Knoblock: I wish to object, that other railroads would be involved and not this plaintiff, and not tending to prove any issues in this case.

Mr. Heyl: Yes, it does. It is on this very thing.

The Court: The only purpose I can see is showing 118 the connection between the international Brotherhood and this strike, and that would be the only thing.

Mr. Heyl: That is right.

The Court: Other than that, I don't think it would have any materiality.

He may answer.

(Question read by reporter.)

A. Nothing other than to advise with the men who came to me for advice as to the laws of our Brotherhood.

Q. You told them, did you not, it was your desire they discontinue delivering any cars or freight from the P. & P. U. or C. B. & Q. or Rock Island to the T. P. & W.?

A. I did not.

Q. Did you advise any of them to do that?

A. I did not.

Q. Did you tell anyone—

Mr. Knoblock: May I have the last question and answer?

Mr. Heyl: I will withdraw the last question.

Q. Did you request the men on the other lines not to deliver to the T. P. & W.?

Mr. Knoblock: We object.

The Court: What is the difference? Suppose he did.

Mr. Knoblock: The purpose is actively interfering with interstate commerce.

The Court: I don't think that has anything to do with this case as long as it doesn't have any force or violence.

Mr. Heyl: We will show there was force and violence in connection with these attempted deliveries.

119 The Court: I will sustain the objection.

Mr. Heyl: That is all, Mr. Keiser.

ZENO MERRILL, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to:

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Zeno Merrill.

Q. And where do you live?

A. On Route 6, East Peoria.

Q. What is your age?

A. Forty-two.

Q. What is your business or occupation?

A. Engineer.

Q. And where are you employed?

A. T. P. & W. Railroad.

Q. How long have you been employed by that railroad?

A. Since 1922.

Q. Continuously?

A. I was out in '29 and the strike previous.

Q. When were you re-employed?

A. I was reemployed in 1930, October.

Q. Were you continuously employed from that date until the present date?

A. Yes, sir.

Q. And where do you perform your duties?

120 A. In the yard and on the hill.

Q. What do you mean by the "hill"?

A. Pushing trains.

Q. Up to Washington, Illinois?

A. Yes, sir.

Q. And where are the yards located?

A. In East Peoria.

Q. Tazewell County?

A. In Tazewell County.

Q. Now, on the night of December 30, 1941, were you performing the duties of your occupation?

A. I was on that day, yes.

Q. What was the time that you finished your day's work?

A. 5:30 P. M.

Q. And at what point in the yards did you complete your work?

A. Round house.

Q. Then what did you do?

A. I registered.

Q. What do you mean by that?

A. Registered on the register report that the crews do, made out a work report.

Q. What did you do following that?

A. I called at the office to be taken home. The man said he would take me home.

Q. How far do you reside from the point of your employment?

A. Approximately two miles.

Q. And to reach your home, what road do you travel?

A. I think it is Route 24 to the junction of 116.

Q. And there is a lane leading from 24 to the plant?

121 A. To the railroad property.

Q. You traveled on that lane?

A. Yes, sir.

Q. Now, will you tell the court what happened as you traveled that lane to reach the hard road, Route number 24?

A. I was being accompanied out the lane by this man in a car, and approaching the hard road became involved in an accident. The car careened to the north side of the road and opposite a fire that the men had had there, the pickets, and the cars were so situated that they blocked the traffic, and the man that collided proceeded forward east to the north side of the road, and that car that I was in pulled a little farther westward or eastward—or westward on the north side of the road, and he got out to go back to talk to this man that he had collided with. It had collided with the left door. It was a two door car. It collided with the left door, and broke the window in this door, and then a couple of men came up to the side and peered through the window of the car, and also came around to the other side, the north side. That door was locked. They later came around to the other side and ordered me out of the car.

Q. Do you know who those men were?

A. I remember them as McMullen and Todd.

Q. That is H. O. Todd and Walter McMullen?

A. I think those are the initials.

Q. Will those two gentlemen stand up? (Persons named rise.) Are those the two?

A. Those are the two.

Q. What happened after that?



A. I refused to move out of the car, and the car  
122 door was opened by one of the men, and I thought—

Mr. Knoblock: I object to this.

The Court: State what happened.

Q. State what happened.

A. I thought—

Q. You can't think. You have to just state what hap-  
pened. They are objecting to your thinking.

A. Rather than to be dragged out of the car,—

Mr. Knoblock: Wait a minute! I object to that.

The Court: I think he may answer. He is different  
from a lawyer. A man has to think to talk!

Go right ahead and tell us what happened.

A. Rather than to be dragged out of the car, I pro-  
ceeded out myself, and was told to take my glasses off.

Q. Who told you that?

A. That I can not say.

Q. How many were there then?

A. All I remember is these two men, plus others. I  
don't know who they were.

Q. You didn't recognize the others?

A. No, sir.

Q. Were you on the public highway at that time?

A. Yes, sir.

Q. What happened following that? Will you tell the  
whole story to the court?

A. I was forced across the road.

Mr. Knoblock: I object.

The Court: Tell what they did.

Q. That is a conclusion. Tell what was done.

123 A. I was forced across the road.

Mr. Knoblock: I object to it.

The Court: Tell what they did, instead of saying "be-  
ing forced." Did they take hold of you?

A. They took hold of me, handled me on the hard road,  
pushed me over the guard rail way down into a culvert or  
ditch.

Q. Where is the culvert?

A. The culvert is on the south side of the road.

Q. How many were there then?

A. Well, I would say there was ten or twelve men alto-  
gether, roughly.

Q. What else did they do?

A. They beat on me and kicked—

Mr. Knoblock: Who? "They" should be designated.

The Court: If you know who it was that beat you, who was it?

A. I can't exactly say who was doing the beating. I was protecting myself with my coat, and I peered at times and noticed these men around me, but I can not state their names.

Q. Were these two you have identified and who stood up in the court room two of the men present? Were they present?

A. I am positive one of them was at the time.

Q. Which one?

A. McMullen.

Q. At the time you were being beaten up?

A. Yes, sir.

Q. Then what occurred after that?

A. I was pushed on into this culvert.

Q. How deep was that culvert?

124 A. Oh, I would say five to six feet deep, somewhere in that neighborhood.

Q. All right!

A. And I attempted to get out of the culvert and I was pushed back in, and kicked along with it.

Q. Do you remember who was there?

A. I am pretty sure there was one of the men, McMullen.

Q. Was it some of the men that were gathered there?

A. Yes, sir.

Q. Do you know what happened following that?

A. After being pushed back in the culvert, I made my way to the end of the culvert. I had taken my glasses off in protection for my eyes,—

Mr. Knoblock: We object to this.

The Court: It may stand, taking his glasses off.

A. —to save my own eyes, and then the procedure of being kicked while in the culvert, my glasses were thrown away by some means out of my hand. At the end of the culvert I was going to proceed through the culvert when faces showed up on the other end.

Q. Did you recognize any of the ones on the other end?

A. No, sir.

Q. Did you recognize any other persons than the two you have identified in the court room who were present that evening at any time during that occurrence?

A. I recognized three others.

Q. What are their names?

A. There was Causey.

Q. W. E. Causey?

A. W. E. Causey and Carl Rosskamp and Walter Kohtz.

125 Q. Will these gentlemen stand up? (Persons named rise.) Are these three of the men that were there?

A. Those are the ones I recognized.

Q. These men that have stood up in the court room?

A. Yes.

Q. Were they or not in the gang out there—

Mr. Knoblock: I object to "gang."

Q. —in the group?

The Court: He may answer.

Q. Were all of these men in the group you have described there at the time of this occurrence?

A. All but one.

Q. Which one?

A. I don't think that Walter Kohtz was in the employ.

Q. Was what?

A. Walter Kohtz.

Q. Was he present with the rest of these men is what I am asking you.

A. Yes, sir.

Q. And at the time you were being assaulted?

A. Yes, sir.

Q. What did you do after that?

A. I became blinded while in the approach of this culvert with the snow, and I had slight scar on my nose that was bleeding, and the next thing that I knew I was being ordered into a car.

Q. What was said?

A. They says, "Get in that car."

Q. Do you know who said it?

A. No, sir, I do not.

126 Q. None of these that were present?

A. I can not say as to who it was.

Q. Then what happened?

A. I was placed in a car and returned to the company property.

Q. And then what happened?

A. The police was ordered.

Q. Did you go any place from there?

A. From the company property I was taken to the police station in East Peoria.

Q. And swore out a warrant?

A. Yes, sir.

Q. Will you give me the name of the man that was taking you in his car from the premises of the company to your home? You simply said "Thompson," I believe.

A. Thompson.

Q. Do you know his full name? Herschel?

A. Herschel Thompson, I think, yes.

Q. Did he take you from the place where you were assaulted back to the company's premises?

A. That I don't know.

Q. You don't know who took you back?

A. I don't know.

Mr. Knoblock: I submit the question has been answered.

The Court: Yes.

Q. What was your condition at that time?

A. Well, I was in pain from being beaten on and kicked, and rather shaky.

Q. Was that the reason you didn't know who took you back?

Mr. Knoblock: Just a minute! I don't see the materiality.

127 The Court: He has answered. He said he didn't know.

Mr. Heyl: I didn't get the ruling.

The Court: He answered. He said he didn't know.

Q. Do you know a man by the name of C. L. Brown?

A. Yes, sir.

Q. Did you or not recognize him as one of the company there?

A. No, sir.

Mr. Knoblock: I object to the form of the question.

Mr. Heyl: He said he didn't, so that is all there is to that.

Q. I will ask you if, on the following day, you were in the employ of the company?

A. No, sir.

Q. Were you on the 31st?

A. No, sir.

Q. Were you on any time after that?

A. Just partially one day.

Q. What day was that?

A. Yesterday.

Q. Well, prior to the time that you had this difficulty on Route 24 at the intersection of that road and the lane, did you have any difficulty with reference to your employment?

A. No, sir.

Q. Were any stones thrown at you at any time?

A. There was coal thrown at me.

Q. That is what I am trying to get at. When was that?

A. That day.

Q. That same day?

A. Same day.

128 Q. That was December 30, 1941?

A. Yes, sir.

Mr. Knoblock: I move that be stricken. There is no proper foundation laid for that statement.

Mr. Heyl: I am going to get to it.

The Court: If you can, connect it up.

Mr. Heyl: I will connect it up.

Q. Where did that occur?

A. That occurred at the viaduct, or where the Nickel Plate crosses the T. P. & W.

Q. Where, about, is that?

A. Well, I think it's Washington.

Q. Is it the viaduct?

A. It's the 150 viaduct.

Q. The road that leads to Morton?

A. Yes, off of 24.

Q. Commonly called 121?

A. I think so, yes, sir.

Q. It occurred near there?

A. Yes, sir, right below.

Q. What happened? Will you tell the court what happened?

A. I was backing up into the yard—

Q. What with?

A. —with a locomotive, peering back to notice the track and one thing or another, if it was all clear, and my face was, I would say, six inches from the cab when a hunk of coal splattered on the corner of the cab, and splattered in my face.

Q. Where did that coal come from?

A. It came from the north side of the track, opposite where the pickets were.

129 Q. Did you see some pickets there at that time?

A. Yes.

Q. How many were there?

Mr. Knoblock: I move that this be stricken unless those pickets can be identified.

The Court: I think he may answer.



How many pickets were there?

A. Roughly, I would say five to six.

Q. Did you observe those pickets there before and after that day?

A. Yes.

Q. Were they there before this strike was called?

A. No, sir.

Q. Did you recognize any individuals in that group—

A. No, I didn't.

Q. — on that day, or any day?

A. No, I didn't.

Q. Did you recognize these men in any way as being formerly employees of this plaintiff?

Mr. Knoblock: Wait a minute! I object.

He has answered he didn't recognize—

The Court: He said he didn't recognize any, but I think he can answer if there was any recognition that did convince him if there was any former employee.

A. I recognized that the majority of them were former employees of the company.

Q. Was that true of the ones that constituted the picket line that day?

A. Yes, sir.

Mr. Knoblock: I object and move it be stricken, 130 that he recognized them as former employees. If he didn't recognize any of them, I don't see how he could recognize them as former employees.

The Court: I think he meant he didn't know their names, but saw them working about the place. Is that about correct?

A. Yes, sir.

Q. I will ask you if the ones that were at the lane that you referred to in the occurrence of that evening also were former employees of the T. P. & W.?

A. Yes, sir, with the exception of Kohtz, that I don't think was.

Q. Walter Kohtz?

A. Yes, sir.

Q. He was not an employee?

A. I don't think he was.

Q. At this occurrence at the viaduct, you were operating a locomotive engine, were you?

A. Yes, sir.

Q. Was there anything attached to it except the tender?

A. I think a tank car.

Q. You were using that engine for the purpose of moving cars, were you not?

A. Yes, sir, returning to the yard.

Q. In connection with the business of the plaintiff?

A. Yes, sir.

Q. And where had you been?

A. I had been to the C. B. & Q. yard.

Q. Where is that located?

A. That is down near Hiram Walker's at the foot of Persimmon Street.

131 Q. Did you deliver some cars there?

A. We delivered some cars.

Q. And were returning?

A. And were returning; had a message to pick up some cars.

Q. Were you backing?

A. Yes.

Q. Going north?

A. No, backing east.

Q. East?

A. Yes.

Q. Were the cars that were delivered to the C. B. & Q. loaded or empty?

A. That I can not say.

Q. Can you tell us the name of the conductor or foreman handling these cars?

A. John Heilman.

Q. Now, I want to go back to the evening of that day at the intersection of the lane and the highway. Did these men that you have identified or any of those accompanying them at that time of that occurrence make any statements to you of what they would do?

A. Throughout the—

Mr. Knoblock: I think these men should be identified. How can we deny that if we don't know who they are?

The Court: Do you know who talked to you and what statements were made? And what statements?

A. I know one man.

The Court: Who was it?

A. L. C. Totten.

132 Mr. Knoblock: Who?

A. L. C. Totten.

Q. When was that, and where?

A. That was while I was switching at the freight house.

Mr. Knoblock: I object.

Mr. Heyl: You have me confused now.

Q. I will go into that. What day was that at the freight house?

A. That was the first day of the strike.

Q. That would be Sunday, December 28 or 29? Monday, the 29th?

A. It would be Sunday. That was the first.

Q. The strike was started on Sunday evening, December 28. When was it with reference to that?

A. It was on Monday, then; Monday.

Q. Where and what time did this occur?

A. I think it was around noon. I can't remember exactly the time of day.

Q. Where?

A. At the freight house?

Q. Where is the freight house?

A. The freight house is located on East Washington. I would say it was opposite the light plant in East Peoria.

Q. Tazewell County?

A. Tazewell County.

Q. Will you give us the name of this man Totten? Will you give us his given name?

A. Leo C. Totten.

Q. He is one of the defendants in this case?

A. Yes, sir.

Q. Is he in the court room?

133 Mr. Knoblock: Will Mr. Totten stand up?  
(Person named rises.)

Q. Is that the gentleman?

A. That is the gentleman, yes.

Q. Tell the court what he said to you at that time and place.

A. Well, he swore at me.

Q. What did he say? There are various degrees of swearing, so we would like to have his words if you can give them.

A. If it is permissible.

The Court: What did he say?

A. He said, "You are a fine s. b." and in return I told him—I says, "It wasn't wrong in '29." He says, "No." I said, "There isn't—It isn't wrong now, is it?" and he put his head down, and never answered me.

Q. What else did he say?

A. I asked him—I said, "You can have this job." He

said, "I don't want it." I said, "What are you arguing for, then?" That is the only words that took place.

Q. Was there anything said later by him?

A. No, sir.

Q. Were there any others there at the time?

A. There was a man at the time.

Q. Do you know who he was?

A. His name is Dodson.

Mr. Elliott: Dodson in the room?

Q. Were there any statements made to you at any other time by any of the other defendants in this case?

A. There were various men that I know were employees calling me names, dirty names.

134 Q. When and where were you?

A. I was in the cab of the engine.

Q. What day?

Mr. Knoblock: Wait a minute!

Mr. Heyl: I will follow it up.

A. It was on both days, Monday and Tuesday.

Q. By "employees," whom do you mean?

A. Well, I have seen employees. There was Underwood and there was a man named Mack.

Q. What's Underwood's name?

A. Jerry Underwood.

Q. G. L. Underwood?

A. Yes, G. L.

Q. What was the other name?

A. John Mack.

Q. And where did you see these men?

A. In the car running parallel on the hard road.

Q. At what point?

A. It was on Washington Street east of where Martin's oil station is in Peoria—East Peoria.

Q. Were these men former employees of the T. P. & W.?

A. Yes, sir.

Q. What did they do? What did they say to you?

Mr. Knoblock: I object as having been asked and answered. He said they called names.

The Court: I don't think he said what was said.

What was said?

Q. Tell what was said.

A. I can't say as to what they were saying. They  
135 were hollering at me. One—I can remember the name  
"scab."

Mr. Knoblock: I object to the former testimony saying it was dirty names.

The Court: It may stand.

Q. Anything else?

A. No, sir.

Q. What were you doing?

A. I was going toward Peoria.

Q. With a locomotive?

A. With a locomotive.

Q. Did you have anything attached to the locomotive?

A. A caboose.

Q. And was that in the performance of your duties as an engineer for the plaintiff?

A. Yes.

Q. Which way were these men going?

A. Going toward Peoria.

Q. Following the train?

A. Yes, parallel.

Q. How far did they follow?

A. That I can't say because my eyes was looking on the rail.

Q. Is C. L. Underwood in the court room? Or G. L. Underwood?

(Person named rises.) Is that the man?

A. That is the man, yes.

Mr. Heyl: I think you may cross examine.

The Court: We will take a recess for ten minutes.  
(Recess.)

The Court: You may proceed, Mr. Heyl.

Mr. Heyl: I would like to ask a further question.

136 Mr. Mack and Mr. Dodson in the court room?

Mr. Dodson? Mr. Mack?

That's all. Cross examine!

The Court: Cross examine!

*Cross-Examination by Mr. Knoblock.*

Q. You say your name is Zeno F. Merrill?

A. Correct.

Q. And you are forty-two years of age?

A. Yes.

Q. And live at Rural Route number 6, East Peoria?

A. Yes.

Q. You have been employed by this plaintiff approximately how long, Mr. Merrill, would you say?

A. Since '22.

Q. And directing your attention to the 29th day of December, 1941, you knew on that day that a strike had been called previously by the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen, hadn't you?

A. Yes, sir.

Q. On that day you were a member of one of those organizations, weren't you?

A. Yes, sir.

Q. Which one?

A. Brotherhood of Locomotive Firemen and Enginemen.

Q. I see. Now, on the date of December 29, 1941, did you operate an engine that day?

A. 29th? What day is that, sir?

Q. Well, you have testified about it.

137 A. Well, that's on a Monday?

Q. I think that's right.

A. Yes, sir.

Q. And I assume there were other members of the crew assisting you that day?

A. Yes, sir.

Q. Who were they?

A. They were Heilman,—

Q. Do you know where Heilman is from?

A. He lives in Peoria.

Q. He lives here in Peoria? In what capacity did he work that day?

A. Foreman.

Q. Who else was on that train?

A. Two boys by the name of Widmer.

Q. Widmer?

A. Widmer, I think, is their names.

Q. Where were they from?

A. Washington.

Q. Washington, Illinois?

A. I am pretty sure.

Q. Anyone else?

A. Fireman.

Q. What were the Widmers doing that day?

A. They were switchmen.

Q. They were switchmen? Both of them?

A. Yes, sir.

Q. Who else was on the train?



A. The fireman.

138 Q. What was his name?

A. Hardy.

Q. Where is he from?

A. That I don't know.

Q. And who else was on the train? Anyone else?

A. A student was on.

Q. A student?

A. Yes.

Q. Is that the name of the man?

A. He was a student fireman.

Q. He was a student fireman? That was his work that day?

A. Yes.

Q. Do you know what class of work they were in prior to this occasion?

A. The fireman and the men that were acting as switchmen were from the repair track.

Q. From the repair track of what road?

A. T. P. & W.

Q. Mr. Merrill, how much of a bonus were you paid by the plaintiff to work on that date?

A. No bonus.

Q. No bonus at all?

A. No, sir.

Q. You are sure of that?

A. I am positive.

Q. You weren't promised \$10.00 a day extra, were you?

A. No, sir.

Q. Now, when you left the plaintiff's premises on the evening of December 29, 1941, did I understand you to  
139 say that you asked someone to take you home?

A. Yes, sir.

Q. Do you know whether the other men that worked with you that day also asked someone to take them home?

A. No, sir.

Q. But you did?

A. I did.

Q. As far as you know, no one did take the other members of your train crew home that day, did they?

A. No, sir, not as far as I know.

Q. Then you got into Herschel Thompson's car, is that correct?

A. Yes, sir.

Q. Where did you get into his car?

A. At the round house.

Q. Describe the location of that house to us as well as you can, will you?

A. Like in East Peoria?

Q. Yes, with reference, say, to the lane that runs southerly off of hard road number 24.

A. Off of Route 24 you would go south a good block, cross the Nickel Plate tracks and turn left, and go approximately a block east.

Q. Altogether it's approximately two blocks from the hard road?

A. Two good blocks from the hard road.

Q. About what time did you get into Mr. Thompson's car on that night?

A. About 5:45.

Q. About 5:45?

A. Yes.

Q. Was it dark then?

A. Yes, sir.

140. Q. What kind of a car did Mr. Thompson have?

A. I think a Ford, two-door. I am not positive of the make, but it was a two-door.

Q. Commonly called a coach, is that right?

A. A coach, yes, sir.

Q. Where were you sitting in that car?

A. In the back seat.

Q. You were— Were you sitting on the seat or on the floor?

A. I was laying down on the edge of the seat.

Q. And you remained in that position until sometime after the accident, is that right?

A. Well, right to the accident, when I rose to find out what had happened.

Q. Now, have you read the complaint filed in this case by the plaintiff?

A. Have I read what?

Q. Have you read the document we call a complaint filed in this case by the plaintiff?

A. In the newspaper?

Q. Oh, no! I mean the document that was filed with the Clerk of this court.

A. No, sir.

Q. Have you seen a copy of it?

A. No, sir.

Q. You have not?

A. No, sir.

Q. You made an affidavit concerning the activities on the evening of December 29, 1941, didn't you?

A. Yes, sir.

141 Q. You made and gave it to one John H. Royster, didn't you?

A. Yes, sir.

Q. He is connected in a legal way with Mr. Heyl, the attorney?

A. I guess he is. I can't say as to that.

Q. I assume that when you made that affidavit and gave it to Mr. Royster, that the things you made in that affidavit and stated in there were true and correct?

A. Yes, sir, to the best of my ability.

Q. And you were placed under oath by Mr. Royster at that time, weren't you?

A. Yes, sir.

Q. As I understand you to say here today, the car in which you were riding, being driven by Herschel Thompson on this evening of December 29, 1941; came to a stop after entering upon the hard road due to an accident with another truck, is that right? Or with a truck, is that right?

A. Yes, sir.

Q. And the car of Herschel Thompson, after it came to a stop that night was it stopped by reason of any interference from the pickets? Is that true?

A. To the best of my ability, it wasn't.

Q. It was not, and as far as you know any allegation that may be contained in the complaint sworn to by Mr. McNear, saying Herschel Thompson was interfered with by pickets and stopped is erroneous?

Mr. Heyl: I object to that question; too general.

The Court: Yes. The pleading will state for itself.

Mr. Knoblock: Very well, Your Honor. I will withdraw the question.

142 Q. There was nothing there you observed, and as far as your knowledge goes, that resulted in the stopping of Herschel Thompson's car that had anything to do with the activities of the pickets, isn't that true?

A. No, sir.

Q. And the car was stopped by Herschel Thompson after he had gone on some short space beyond the picket line?

A. Yes, just a few feet. He pulled away to avoid a traffic jam. \*

Q. I see. Now, you say that while you were lying down in the rear seat of the car of Herschel Thompson that men came to both sides of the Thompson car, is that correct?

A. I wasn't lying down. I arose.

Q. You were sitting up at that time?

A. At the time of the crash—

Q. To see what happened?

A. What happened, yes, sir.

Q. After the car was brought to a stop by Herschel Thompson, was it on the north shoulder?

A. Yes.

Q. What direction was it headed?

A. West.

Q. It was parked near what is commonly known as the cemetery lane?

A. Yes, sir, midway between the cemetery lane and the T. P. & W. lane.

Q. And the other vehicle with which Herschel Thompson had an accident was brought to a stop?

A. Yes, sir.

Q. And it was taken to the north shoulder of the road, too?

A. To the best of my ability, yes.

143 Q. Do you know what kind of a vehicle it was? An automobile or a truck?

A. I don't know other than it was green.

Q. How far was the truck and automobile in which you were sitting apart after they came to a stop?

A. Well, it was a very short distance.

Q. What is your best judgment?

A. I would say maybe from the impact a foot or so.

Q. The truck and the automobile of Herschel Thompson were within one foot of touching one another?

A. Yes, sir.

Q. Was the truck later moved off the road?

A. Yes, sir.

Q. About how far was the truck off the road?

A. It was moved to the rear of me, and I can't say.

Q. You have no knowledge?

A. I have no knowledge of the distance.

Q. But Mr. Thompson went to where the truck had been moved after the accident in order to have his conversation concerning the accident, isn't that right?

A. To the best of my ability he did, yes.

Q. Now, you say after the Thompson car came to a

stop there were men that came to both sides of the Thompson car, is that correct?

A. Yes, sir.

Q. Who were those men?

A. I only know the two, Mr. Todd and McMullen.

Q. Which side of the car were they on?

A. On the left hand side.

Q. And that would be the side that had been hit in the accident?

144 A. Yes, sir.

Q. And there was some damage to that side of the car, isn't that right?

A. Yes, sir.

Q. Do you know who opened that door?

A. I am not positive, no.

Q. I see. Now, you say someone ordered you out of the car. Do you know who it was?

A. I remember of Todd, seeing him, telling me to get out of that car.

Q. I see. Anyone else?

A. Well, at that time there was several men, through the window.

Q. Do you know their names?

A. I don't know them.

Q. You don't know their names?

A. No, not positive.

Q. Now, when the left door of this Thompson car was opened you got out of the car under your own power, didn't you?

A. Yes, sir.

Q. And you got out in a hurry, didn't you?

A. Well, not extraordinarily in a hurry. I stepped out like I ordinarily would.

Q. When you stepped out of that car, you didn't have your fists doubled and your arms swinging, did you?

A. No, sir.

Q. You are sure of that?

A. I am positive.

Q. And you thereafter say that certain parties there proceeded to manhandle you, as I recall it. Is that what you said?

145 A. Yes, sir.

Q. Who were they?

A. Well, these men, as I say, I cannot say who were doing the beating other than I know I saw McMullen.

Q. McMullen is one you know beat you that evening, is that right?

A. Yes, sir.

Q. Did he have a club in his hand?

A. No, sir.

Q. Do you know anyone else that beat you there that evening? Name?

A. No, sir.

Q. You couldn't place the name of any one single individual other than McMullen as having struck you or assaulted you there on that evening, is that right?

A. Not by name, no, sir.

Q. I see. You never saw C. L. Brown there that evening at all?

A. No, sir.

Q. But within an hour after this assault you went to the city hall in East Peoria, didn't you, and you swore out a warrant for assault and battery against C. L. Brown and W. E. Causey, didn't you?

A. Yes.

Q. If you didn't know they beat you, how did you swear out that warrant?

A. I told the police those faces were there in my immediate surroundings.

Q. And you swore out a warrant for assault and battery against Causey and Brown when you didn't know whether they had taken part in that assault or not, didn't you?

Mr. Heyl: I object because they were as guilty as 146 the men who did the beating.

The Court: I don't think this court is much concerned with the warrants issued down there, except to test this man's credibility. I think he may answer. Read the last question.

(Question read by reporter.)

Mr. Heyl: I want to make a further objection that question is argumentative, and it is not proper cross examination. As to why he did it, the facts there ought to speak, and not his conclusion.

The Court: I can't see that it has much materiality, but he may answer.

Did you swear out a warrant?

A. Yes, sir.

Q. Didn't I understand you to say on direct examination you didn't recall C. L. Brown being there at all?



A. Yes, sir.

Q. Yet you swore out a warrant for him?

A. Yes, as I get it.

Q. You don't have any knowledge of his being there at all?

A. No.

Q. Carl Rosskamp you mentioned as being there that evening?

A. I did.

Q. You are sure of that?

A. I saw him.

Q. You saw him when you claim this assault took place?

A. Yes, sir.

Q. As a matter of fact, Merrill, isn't it a fact you didn't see Rosskamp there until you came back from 147 the T. P. & W. round house that evening, and Rosskamp was never there when you claim this assault took place? Isn't that a fact?

A. I saw his face.

Q. Later?

A. In the picket line.

Q. Later?

A. After I was brought from the four house.

Q. And you don't know whether he was there when the assault took place?

A. When this manhandling was going on.

Q. You are sure?

A. I am sure of that.

Q. You had a slight scar on the nose, is that right?

A. Yes, sir.

Q. When you got down to this ditch that you describe, you started toward a culvert, didn't you?

A. Yes, sir.

Q. As a matter of fact, without anyone being near you, you ran into the culvert all by yourself?

A. Yes, sir.

Q. And it hurt you, too, didn't it? You hit it pretty hard?

A. I didn't run into the culvert. I ducked under the culvert.

Q. Now, you tell about on December 30 about a coal-throwing incident.

A. Yes, sir.

Mr. Heyl: I didn't get that.

Mr. Knoblock: Coal-throwing incident.

Q. When and where did that take place?

A. That took place below the viaduct near the  
-148 junction of the Nickel Plate Road and the T. P. & W.

Q. And you didn't see who threw that coal, did you?

A. No, I didn't see it.

Q. And it came from the opposite side of where the pickets were? Is that what you told us a while ago?

A. It came from the side the pickets were on.

Q. You don't know whether they threw it or not?

A. I glanced afterwards, and there was no men except at that picket post.

Q. You didn't see them?

A. No, I didn't see them.

Q. You don't know if anybody else threw it or not?

A. No, I didn't see them.

Q. I understand that you had a conversation with Leo C. Totten at the freight house on Monday, December 29, 1941, is that right?

A. Yes, sir.

Q. And that was about noon?

A. Around noon, to the best of my knowledge.

Q. And you think that he said to you the first thing—he said, "You are a fine s. b.," isn't that right?

A. Yes, sir.

Q. Besides that, he said nothing other than, "I don't want your job"?

A. Yes.

Q. That is all he said? Those were the only words he said on that occasion?

A. That is all he said. The rest was in nodding.

Q. You have mentioned a man by the name of Dodson. He was with him?

149 A. Yes, sir.

Q. Do you know where Mr. Dodson is?

A. Do I know where he is?

Q. Yes.

A. No, sir.

Q. Do you know his first name?

A. All I have heard him called is "Biddy." I don't suppose that is his first name. I don't suppose that is rightfully his first name.

Q. You spoke of an occasion on Monday and Tuesday when you were in the cab of the engine on Washington

Street east of where the Martin oil station is in East Peoria. You say Jerry Underwood, or G. Underwood, and John Mack yelling at you, is that right?

A. Yes.

Q. The only name that you heard them say is "scab," is that right?

A. Yes, sir.

Q. They said nothing else that you heard?

A. That I heard, no.

Q. And what else they may have said, you don't know, do you?

A. I don't know.

Q. That was the sole thing that occurred on that occasion?

A. That is all I heard. Their mouth was going.

Q. All that happened? On December 30 you were running an engine on that date?

A. Yes, sir.

Q. Who was with you as members of the crew? Who was the fireman?

A. Same fireman.

Q. Same? How about the switchmen?

150 A. Same switchmen.

Q. What was that, now? I didn't get that.

A. The same switchmen.

Q. And how about Mr. Heilman? Was he with you that day, too?

A. Yes.

Q. What work did he do prior to these dates?

A. He was yardmaster and chief dispatcher.

Q. For the T. P. & W.?

A. Yes, sir.

Q. Who was your crew on the 31st?

A. I didn't work the 31st.

Q. You did not work the 31st?

A. No.

Q. Did you say you worked yesterday?

A. Yes, sir.

Q. In what capacity?

A. As an engineer. Well, you would call it an engineer, yes, sir.

Q. Who was your fireman?

A. McCahey.

Q. Where is he from?

A. That I don't know.

Q. How long had he been employed?

Mr. Heyl: I object as not cross examination, immaterial whether he worked yesterday.

The Court: Objection sustained.

Q. Now, referring to your affidavit that you say you gave Mr. Royster in regard to the happening on December 30, 1941, between 5:30 and 6 o'clock, I haven't heard you say here—I will ask you if you did not say this, or this 151 in substance: "At least one of the men that were beating on me had a club"? Did you or not make that statement to Mr. Royster?

Mr. Heyl: Let's follow the rule, and show him the affidavit.

The Court: The form of the question isn't proper. If it is for impeachment,—

Mr. Heyl: I object to it.

The Court: He has a right to ask if anybody did use a club.

Q. Did anyone use a club that night?

A. Not to my knowledge.

Mr. Knoblock: That's all.

The Court: Anything further with this witness.

Mr. Heyl: Yes.

*Redirect Examination by Mr. Heyl.*

Q. In your direct examination, you referred to a statement of Mr. Totten with reference to 1929, and I don't believe that is clear in the record. What was that statement?

Mr. Knoblock: I think that is—We object.

The Court: What is the purpose?

Mr. Heyl: I want to ask it as a direct question.

The Court: Will you read the question?

(Question read by reporter.)

The Court: Referring to 1929?

Mr. Knoblock: Yes. That was definitely in the record, and the only purpose is repetition.

The Court: It won't hurt anything as long as we 152 don't have a jury.

What was the statement about 1929?

A. I asked him if it wasn't wrong in 1929,—

The Court: You have made that statement.

Mr. Knoblock: That is what I am objecting to.

Let the court rule on it.

The Court: Objection sustained.

Q. What did 1929 refer to?

Mr. Knoblock: I object to that. I haven't gone into that.

The Court: Objection sustained.

We all know what it refers to.

Go ahead.

Q. Do I understand you that this coal-throwing incident happened on Monday, the 29th, and the assault on Tuesday, the 30th? Are those the correct dates?

A. I rather think it was on the 30th, on the day of the assault, about the coal-throwing.

Q. The same day?

A. Yes.

Q. And that was the date of the assault?

A. Yes, sir.

Q. Tuesday?

A. Yes, sir.

Mr. Heyl: That's all.

The Court: Anything further?

I think we had just as well stop at this point.

We will start at 9:30 in the morning.

Mr. Heyl: We can be ready at 9.

The Court: 9 will be all right with me. Is that 153 satisfactory?

Mr. Knoblock: I have some work.

(Discussion off the record.)

Trial adjourned at 12 o'clock noon.

January 9, 1942.

Trial Resumed at 9:30 o'clock A. M.

Appearances:

Same as before.

HERSCHEL THOMPSON, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Herschel Thompson.

Q. How old are you?

A. Forty-six.

Q. Where do you reside?

A. 300 Arnold Street, East Peoria.

Q. And what is your business or occupation?

A. Special agent, T. P. & W.

Q. And how long have you been employed as a special agent?

A. Oh, around thirteen or fourteen months.

Q. And have you been employed continually—  
154 for that period of time?

Mr. Knoblock:—I can't hear you.

A. Yes.

Q. Now, were you in the line of your employment on or about December 30, 1941, in the yards of the plaintiff?

A. Yes, sir.

Q. And are you acquainted with Zeno Merrill, who testified in this case?

A. I know him when I saw him.

Q. And on that date, did you or not take Mr. Merrill in your car to his home, or start to his home?

A. Yes, sir.

Q. About what time of day was that?

A. Oh, it was around 6 o'clock, somewhere along there.

Q. And prior to the time you took him in your car, did you observe anyone in the lane leading from the hard road to the premises of the plaintiff?

A. Yes, sir.

Q. What did you observe?

A. A bunch of pickets out there.

Q. I couldn't hear that.

A. A bunch of pickets out by the gate.

Q. How many were there?

A. Thirty-five or forty.

Q. Were they armed with anything?

A. Some of them had clubs.

Q. And where were they stationed?

A. Right at the entrance to the hard road where it goes down to the lane.

155 Q. Had you passed into that lane from the hard road before on that day?

A. Yes, sir.

Q. What did you observe with reference to the action of the pickets when you attempted to drive into the lane?

A. They never bothered me, just stopped everybody that goes in.



Q. After you took Merrill in your car, what did you do?

A. Well, I went over to the round house and took him—started to take him out. It was slick that evening, and a car hit me, a little truck, when I pulled across the hard road.

Q. Had an accident?

A. Had an accident.

Q. When you came to the hard road, is that it?

A. Yes.

Q. Where did you pull your car?

A. To the entrance to Fon du Lac Cemetery.

Q. How long is that intersection from the hard road?

A. About three-quarters of a block.

Q. What did you do?

A. Went back to where the truck had hit me, and gave him my license number.

Q. Where was the truck?

A. East of the lane.

Q. About how far were the vehicles apart?

A. Oh, about three-quarters of a block.

Q. Then what happened after that?

A. I heard a noise up there where my car was, and looked around, and there was a couple of fellows up there, and they had him out of the car.

156 Q. Whom do you mean by "him"?

A. Mr. Merrill.

Q. Did you return to the car?

A. Yes, sir.

Q. What did you observe?

A. They had him running around all over the road trying to beat him up, across the road.

Q. Did you recognize the two men that you say were there when you looked back from where you were standing by the truck?

A. I knew one of them.

Q. What was his name?

A. McMullen.

Q. Is that one of the defendants in this case?

A. Yes, sir.

Q. Walter McMullen?

A. Yes, sir.

Q. Then did you go back near your car?

A. Yes, sir.

Q. Just tell from the time you went back there until

this transaction had ended what occurred. Just tell the court the whole story.

A. They had him out of the car, hitting him around there, and he was across the road, back and across the road, and then they got him across the fence and beat him up a little and in the ditch, and from there I went to get some help, and when I came back it was mostly quieted down, and he was down by my car.

Q. Did you recognize any of the other persons that were engaged in that transaction?

A. Brown, he is the only guy, Clarence Brown. I got hold of his arm and tried to get him off of him.

157 Q. C. L. Brown?

A. Yes.

Q. What was he doing?

A. Hitting him.

Q. With what?

A. His fist.

Q. What part of his body?

A. He had his back to him, and he was hitting him on the head.

Q. What did you do?

A. Tried to pull him off.

Q. Did you succeed?

A. You couldn't, with a bunch of guys around there.

Q. Did you recognize any of the others around there?

A. No, I didn't.

Q. Do you know Mr. C. L. Brown?

A. Yes, sir.

Mr. Heyl: Will you stand up? (Person named rises.)

A. Yes, sir.

Q. Is that the gentleman who just stood up in the court room?

A. Yes, sir.

Q. What did you do?

A. I went down to the special agents' office and got Mr. Kipling.

Q. And what did you do then?

A. He come back up there, and it was about all over with them.

Q. Did you recognize any of the other persons that were present there at any time?

Mr. Knoblock: I object to that. It has been asked and

answered. He said he didn't, that these were the only two he knew.

158 The Court: I think he may answer if he did recognize anyone else.

A. Oh, yes.

Q. Who were they?

A. Mr. Causey was there.

Q. W. E. Causey, one of the defendants?

A. Yes, sir.

Mr. Heyl: Mr. Causey, will you stand up if you are in the court room? (Person named rises.)

A. Yes, sir.

Q. Is that the gentleman?

A. Yes, sir.

Q. Who else?

A. Gibbons was there.

Q. What was the name?

A. Gibbons.

Mr. Heyl: Is Mr. Gibbons in the court room?

Q. Did you observe Rosskamp or Kohtz?

Mr. Knoblock: I object to the leading form of the question, trying to put the words in his mouth.

The Court: I think he may answer.

Was he there?

A. Yes, sir.

Q. The two of them?

A. Yes, sir.

Q. Anyone else?

A. Underwood.

Q. Kohtz, you say, is the other one?

A. Yes, and Underwood, too, Jerry Underwood.

159 Q. Mr. Kohtz and Mr. Underwood?

A. Yes.

Mr. Heyl: And Mr. Rosskamp,—will they stand up? (Persons named rise.)

A. That isn't the Kohtz that was there. It is his brother.

Q. Is the brother here? What is his name? Do you know his first name?

A. No, I don't.

Q. This is Walter Kohtz, is it?

Mr. Elliott: Is your name Walter Kohtz?

Mr. Kohtz: That's right.

Q. Now, when you came up to the intersection of this

highway with Mr. Merrill, where were these men pickets standing?

A. On both sides of the lane.

Q. And where, with reference to the hard road?

A. Right beside the hard road.

Q. About how many were there?

A. Thirty-five or forty of them.

Q. And what is the size of that lane? What is the width of it?

A. Oh, I don't know exactly what it is, but I rather imagine it's about twelve feet.

Q. Did you observe this truck approaching as you approached there?

A. It was a block and a half away, at the brink of the hill.

Q. Was your view obstructed in any way?

A. There was a few pickets there; couldn't see so good.

Q. Now, after you returned with Mr. Kipling from the round house to the point where Merrill was located, did you observe any marks on Merrill's face or body?

A. Not at the time.

160 Q. Did you at any time?

A. Yes, sir.

Q. What did you observe?

A. He had a mark across where his glasses was on his nose.

Q. What was the character of that?

A. Just where his glasses—the ridge across there was into his face a little bit, into his nose.

Q. And did he have his glasses?

A. No, sir.

Q. Did he have glasses on when you took him up there?

A. Yes, sir.

Q. Now, Mr. Thompson, can you relate any other fact with reference to this strike?

A. What's that?

Q. Did you have any difficulty in connection with any train at any other time?

A. Yes, sir.

Q. Where?

A. On the road down—I went down to the junction, the P. & P. U. junction.

Q. When?

Mr. Knoblock: Where is this?

A. P. & P. U. junction.

Mr. Knoblock: Where have you designated that in the complaint here? Anything that is not referred to in the complaint I am going to object to any examination on.

Mr. Heyl: It is referred to.

Mr. Knoblock: Show me where it is.

Q. Where is the P. & P. U. junction?

161 A. Down on the four corners where you turn to go to Metamora. I don't know what street it is on.

Q. Main Street in East Peoria, is that where it is?

A. Yes.

Mr. Knoblock: There is no charge about anything like that in the complaint. We are objecting to it.

Mr. Elliott: We charge interfering with the trains in East Peoria.

Mr. Knoblock: We absolutely object to anything that is not charged in the complaint.

The Court: We seem to be in disagreement. Is there anything charged?

Mr. Heyl: There is a charge of interference with trains passing from the yards in Peoria to East Peoria, where the trains pass.

The Court: Just read it to me, if you will, please.

Mr. Elliott: Paragraph 37.

Mr. Knoblock: What page is that on?

Mr. Elliott: That is on page 18 (reading same).

The Court: I think he may answer.

Mr. Heyl: Read the question.

Mr. Knoblock: If this is going to be with reference to the crossing of the T. P. & W. and Nickel Plate Railroad and various other points, I submit that is too general. We wouldn't be in position to defend against that. It lets them take hundreds of miles of road and declare anything.

The Court: I don't think in a case of this sort it will hurt to introduce evidence which will not be proper. 162 which may be stricken at the conclusion. I can't tell now whether that is a reference to the particular charge in the complaint or not. I would be glad to listen to you at the conclusion and, if it is improper, it may be stricken. It is quite different than trying it before a jury.

Mr. Knoblock: That's right.

The Court: We can do that.

Read the question.

(Question and answer read by reporter.)

Mr. Knoblock: Will you read that again?

(Two preceding questions and answers read by reporter.)

The Court: Go ahead, gentlemen!

Q. And is that road to Metamora what is commonly known, or generally known, as the "Caterpillar Trail"?

A. Yes, sir.

Q. And it intersects with highway number 24 at that point?

A. Yes, sir.

Q. And the Caterpillar Trail extends across the railway and Farm Creek and the bridge into the City of East Peoria,—

A. Yes, sir.

Q. —is that right?

A. Yes, sir.

Q. Now, having that place in mind, will you state to the court where this incident occurred that you referred to a moment ago?

A. I was called up to come down to the P. & P. U. junction by Mr. Heilman.

163 Q. Where is the P. & P. U. junction with reference to the intersection that I have referred to?

A. Well, it's about twenty-five or thirty feet off the hard road to the left.

Mr. Knoblock: We wish to object to this, and move it be stricken, on the ground there is no allegation of this occasion in the complaint, and we are taken by surprise, improper and immaterial.

The Court: The objection will be overruled.

Let the record show counsel objects to all questions pertaining to this particular location.

Go ahead!

Q. Now, will you give us the date and the time that this occurred?

A. Well, I don't know the date or—

Q. Do you know the day, about? What day of the week it was? When was it, if you know, with reference to New Year's Day?

A. Gosh, I don't know the day. I don't remember the day.

Q. Was it one of the days last week?

A. Yes, sir.

Q. About what time of day was it?



A. Around 3 o'clock in the afternoon.

Q. Now, will you tell what occurred at that place?

A. Well, there was nothing occurred there. They called me to come down there, and 70 was down there, the switch engine, and it wasn't down there; over on Washington Street sitting there.

Q. Washington in what place?

A. East Peoria.

Q. What did you do?

A. Got on the engine.

164 Q. Did you go over to Washington Street?

A. I went over to Washington Street.

Mr. Knoblock: I object.

Q. Where was it on Washington Street? Can you tell where it was?

A. Right at the crossing where you come out of the P. & P. U. "hump" or railroad.

Q. Where is that?

A. On West Washington Street.

Q. Is this where the road crosses Washington Street? Can't you tell where that train was at that time, and where it was located with reference to East Peoria?

A. Well, I am not well acquainted with Peoria and East Peoria like some people.

Q. Was it near the river bridge?

Mr. Knoblock: I object.

The Court: Let's get along.

Do you know where this place was we are talking about?

A. Yes, sir.

The Court: Where was it?

A. Where you come out of the route of the P. & P. U. on Washington Street.

The Court: Where you come out on Washington Street?

A. Yes; sir, the crossing.

Q. Is that the road that passes the Caterpillar Tractor Co.?

A. Yes.

Q. And goes out through East Peoria?

A. Yes, sir.

Q. Where was that train with reference to that crossing?

165 A. Sitting on the north side of the crossing.

Q. And the road there runs in what direction?

A. It runs off north.

Q. Northerly and southerly direction?

A. Northwest, northeast.

Q. What did you do when you got there? What did you find?

A. There was nobody around there only a couple of guys up to the crossing.

Q. What did you do?

A. Got on the engine, and told them to go on. We went over to the P. & P. U. junction and got the cut of cars, and started over to East Peoria.

Q. Then what occurred?

A. We got around the spillway on 24, and they commenced throwing rocks at us.

Mr. Knoblock: Wait! Who?

Mr. Heyl: I will show who it was.

Mr. Knoblock: Where the spillway was?

A. Yes, sir.

Q. Is that in Tazewell County or Peoria County, the spillway?

A. Tazewell County.

Q. Where is it with reference to East Peoria?

A. It's on Route—

Q. It's in East Peoria, is it?

A. Yes, sir.

Q. And where is it with reference to the Caterpillar Tractor plant?

A. Right along the side of it.

Q. And near the Caterpillar Trail?

A. Yes, sir.

166 Q. Now, did you recognize any of the persons there?

A. Yes, sir.

Q. Who were they?

A. Wilson,—

Q. What is his first name, if you know?

A. I don't know his first name.

Q. Who else?

A. Jerry Underwood.

Q. Who else?

A. Rosskamp.

Q. What is the name?

A. Rosskamp.

Q. All right!

A. And Gibbons.

Q. All right!

A. St. Clair. That's all that I remember or recognized.

Q. What did they do?

A. We was going down along there, and they commenced throwing rocks, rocked us, knocked the cab windows out, and we kept on going.

Q. Were there any other men there?

A. Yes, sir.

Q. Who were they?

A. I don't know who they were.

Q. Did you recognize—

A. All of those I told you.

Q. Was there any damage to the train?

A. Yes, sir, they broke the window lights out.

Q. Where?

167 A. On the cab of the engine.

Q. Were there any other men on the train besides yourself?

A. Six or seven fellows in there.

Q. Where were they?

A. In the cab of the engine.

Q. Where were you?

A. In the cab of the engine.

Q. Did the engine have a train of cars attached to it?

A. Yes, sir.

Q. And where were you taking the cars?

A. Over to the "Q" old house track.

Q. In Peoria?

A. Yes, sir.

Q. Did you proceed to that point?

A. Finally we did. We were stopped again down by the bridge.

Q. Where were you stopped?

A. Before we crossed the bridge.

Q. Before you crossed the bridge?

A. Before we crossed the bridge.

Q. Did you recognize any of the persons there?

A. Same fellows.

Q. Any others?

A. No, sir.

Q. What happened there?

Mr. Knoblock: I didn't get this second occasion.

What was that description?

The Court: Down by the bridge, as I understood it.

A. We were stopped before we crossed over the bridge.

Mr. Heyl: He stated the river bridge.

168 The Court: Go ahead!

Q. Is this near the Illinois River bridge?

A. Yes, sir.

Q. Where, with reference to the intersection of the railroad and West Washington Street?

A. Right by it, right where you cross over.

Q. How far from the bridge?

A. Oh, about twenty-five or thirty feet from the bridge before you cross over.

Q. Tell what happened there.

A. We were rocked again. They commenced throwing the rocks, and all of the guys got out of the cab and left, all of the fellows in the cab.

Q. Where did they go?

A. I don't know where they went.

Q. Where did you go?

A. Went over to telephone, and reported it.

Q. Whom did you call?

A. I called the yard office.

Q. And was the engine abandoned then?

A. Yes, sir.

Q. Will you tell the court the names of the persons that threw rocks at that point?

A. Well, Mr. Wilson, Underwood and Roskamp. That is the only fellows I saw there throwing rocks.

Q. Then what happened following your telephone call?

A. I come back to the engine, and pretty soon the engineer drifted back and one of the firemen.

Q. Who was the engineer?

169 A. I don't know his name. He is a stranger to me.

Q. Did you know the firemen?

A. No, sir, I didn't know any of them in the cab except Heilman.

Q. I didn't get—

A. Mr. Heilman is the only man I knew in the cab.

Q. In the engine cab?

A. Yes, sir.

Q. What happened following that?

A. They said the water was low in the engine, so when he come back he put some more water, and Mr. McNear come over, and I and him rode the head of the engine over the bridge.

Q. Into Peoria?

A. Into Peoria.

Q. Who accompanied that train across the river besides yourself and Mr. McNear?

A. One of the firemen.

Q. Did you run the engine?

A. No, sir.

Q. Who did?

A. The engineer.

Q. Was that Heilman?

A. No, sir.

Q. You can't give us his name?

A. No, he is a stranger to me.

Q. Did anything else occur to that train either in the yard where you first saw it, or at the spillway near the bridge?

A. Near the bridge they pulled air on us at the bridge and stopped us.

Q. What do you mean by that?

170 A. Shut the air off.

Q. Who did that?

A. I didn't know who did that. They were throwing rocks, and we were down in the cab to keep from getting hit.

Q. When did it occur with reference to the time the rocks were being thrown?

A. Same time.

Q. Will you tell the court what was done? What mechanical operation took place to stop the train?

A. They pulled the air on the train, and that stops the trains. They can't move it.

Q. You saw it?

A. No, sir.

Q. Did you examine it later?

Mr. Knoblock: I object and move—

A. Yes.

Q. What did you find?

A. The angle cock was pulled on it.

Q. Where is that angle cock?

A. Where the coupling is.

Q. On what?

A. On the car.

Q. How many cars were in that train?

A. I rather imagine seven or eight.

Q. Now, Mr. Wilson and Mr. Rosskamp and Gibbons and Underwood, you identified them?

A. Wilson back at the back, Underwood and Mr. Rosskamp.

Q. Did you recognize any of the other persons present either by name or former employment?

171 A. I just know them by employment.

Q. Were they or not former employees of the plaintiff in this case?

A. Yes, sir.

Mr. Knoblock: I object to that, and move it be stricken. There is no way defendants can answer anything like that.

The Court: I think he has a right to say they were former employees, but he didn't know their names. Is that right?

A. Yes, sir.

The Court: Go ahead!

Q. I will ask you if you observed any persons in an automobile near the train when it was on West Washington Street near the Illinois River bridge?

A. Yes, sir.

Q. Did you observe the number, the license number of that automobile?

A. No, sir.

Q. Did you notice anyone in the car?

A. Yes.

Q. Who was in the car?

A. There was two ladies and a man.

Q. Did you identify the man?

A. Yes, sir.

Q. Who was it?

A. Mack.

Q. J. L. Mack?

A. Yes, sir.

Mr. Heyl: Is Mr. Mack in the court room? J. L. Mack?

172 Mr. Knoblock: He is not a defendant.

Q. Was he a former employee of the T. P. & W.?

A. Yes, sir.

Q. Do you know what line of work he followed?

A. He was a fireman.

Mr. Knoblock: I object to this line of interrogation as to Mack because he is not a defendant.

The Court: I think the objection will be sustained, and the answer may be stricken.

Q. Did you recognize anyone else in the car?

A. Two ladies is all.

Mr. Heyl: That's all. Cross-examine!



*Cross-Examination by Mr. Knoblock.*

Q. Mr. Thompson, you say that you have been employed by the T. P. & W. as special agent for thirteen or fourteen months?

A. Yes, sir.

Q. And your direct superior while in this employment has been Mr. Kipling, is that right?

A. Yes, sir.

Q. Now, on December 30, 1941, you say about 6 P. M. you took Mr. Merrill in your car from the roundhouse there in the T. P. & W. yards, is that right?

A. Yes, sir.

Q. As you started out with Mr. Merrill in your car, where did he sit in the car?

A. What?

Q. Where did he sit? Front or back seat?

A. He was in the back seat.

173 Q. Was there anybody else in the car with you?

A. No, sir.

Q. Was there anybody else occupying the right front seat of your car?

A. No, sir.

Q. What type of car did you have?

A. '41 V-8.

Q. How many doors did it have?

A. Two.

Q. Now, the fact of the matter is, when Mr. Merrill began riding in your car he was lying down on the back seat or floor of the car, wasn't he?

A. No, sir.

Q. He was sitting up, was he?

A. Yes.

Q. He was sitting up at all times?

A. When I left there he was.

Q. He was sitting up as you drove through the picket line and to the hard road?

A. Yes, sir.

Q. He sat up all the way from the roundhouse to the scene of the accident?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir.

Q. You never had any trouble getting through that picket line, did you?

A. No, sir.

Q. They never bothered you in any way, did they?

174 A. No, sir.

Q. On this particular evening, the only reason that you stopped your automobile there on that occasion on the evening of December 30, 1941, is because of the accident?

A. Everybody stops that goes out of there.

Q. I understand that, but when you got on the hard road you never stopped your car because of any activity or interference by the pickets? You stopped it because of the accident?

A. Yes, sir.

Q. Any charge that may be made that the pickets stopped you that night or interfered with the passage of your car is not true?

Mr. Heyl: I object to the form of that question.

The Court: Yes, he has answered.

Q. The pickets had fires burning there during the day and evening during picket duty, isn't that right?

A. Yes, sir.

Q. And the main source of heat there was from wood, sticks and things of that kind, isn't that right?

A. Yes, sir.

Q. And these pickets (you observed them, in fact) used sticks and clubs to punch wood on the fire and stir it up? You saw them do that?

A. They put some in the fire.

Q. After the accident, you left Mr. Merrill sitting up in the rear seat of your car, and you walked in the general direction known as easterly on the hard road to this truck, is that right?

A. Yes.

Q. You say that was about three-quarters of a block from where your car was standing?

175 A. Yes, sir.

Q. It was dark that night except for the light from the bonfire the pickets were around?

A. We have another light on the pole.

Q. That light wasn't burning that night? Isn't that right, Mr. Thompson?

A. Whether they installed that before or not—but I believe it was.

Q. You say it was?

A. I won't say positive.

Q. You don't know? All right! Now, you first heard

a commotion—you heard a commotion when you were back at this truck talking to this truck driver, is that right?

A. Yes.

Q. You don't know how Merrill got out of your car, do you, of your own knowledge?

A. Of my own knowledge I didn't at the time.

Q. You didn't see him get out, did you?

A. No, sir.

Q. You don't know in what manner or form he got out of there, do you?

A. No, sir.

Q. You didn't hear anybody order him out?

A. I was too far away.

Q. You wouldn't hear anything like that if it was done?

A. No, sir.

Q. You say Clarence Brown was there that night, is that right?

A. Yes, sir.

Q. Zeno Merrill testified here yesterday, and he testified that Clarence Brown was not there that night.

If you knew that, would that change your judgment on that point? O

A. No, sir.

Mr. Heyl: I object to that.

The Court: Objection sustained.

Q. You say Mr. Rosskamp was there at the time you said Mr. Brown hit Mr. Merrill, is that right?

A. Yes, sir.

Q. Just where was Rosskamp?

A. Around there with a bunch of the fellows, first one place and another, all over the hard road.

Q. Are you sure you didn't see Mr. Rosskamp until you came back from the round house?

A. No, sir, he was out there at the gate.

Q. He was out there at the gate at the time this scuffle took place?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir.

Q. Walter Kohtz was not there? It was his brother?

A. The one I saw was his brother.

Q. This gentleman was not there?

A. I don't know whether he was or not, but his brother was.

Q. And this truck that you had this collision with, as

I understand it, you saw that a block and a half prior to your entering on the hard road?

A. Yes, sir.

Q. Your visibility was good?

A. You can't see over the top of the fellows.

Q. That didn't obstruct your view?

177 A. Partly.

Q. You can see for a block and a half?

A. Sure.

Mr. Knoblock: Your Honor, at this time the defendants are sure that in this complaint there was no allegations of any kind or character concerning the rockings this man has testified to at the time and place testified to, and we feel that it wouldn't—that it would be prejudicing our interests if we proceeded at this time to cross examine him on those points until the court ruled on that.

The Court: It won't prejudice your interests. I will rule on that at the conclusion. It won't be held against you.

Mr. Knoblock: There are various individuals that have been named by this man that are not defendants.

The Court: If they are not defendants, nothing can be done about it, that is quite certain.

Q. Now, you referred to some occasion where the P. & P. U. junction is on Main Street in East Peoria where you go to Metamora, is that right?

A. Yes, sir.

Q. Will you describe that place to me again?

A. Well, it's on Main Street, Route 24.

Q. On Main Street?

A. On Route 24.

Q. On Main Street on Route 24? Where is it with reference to the city hall in East Peoria? What direction?

A. It's north of there.

178 Q. Is that the hard road that goes over the crossing you referred to?

A. Yes, sir.

Q. As you proceed northerly from the city hall, you go right over the crossing you are referring to?

A. Yes. It's right there by the side of the track and the hard road.

Q. Now, was the place that you got called from Heilman—

A. Somebody called up. He was the one that called.

Q. He was the one that called?

A. Yes, sir.

Q. You don't know what day that was?

A. I didn't keep track of the day. I wouldn't say.

Q. When you arrived there, there was no one around there?

A. The fellows that work there was all.

Q. What?

A. The fellows that work there was all.

Q. Whom do you mean by that?

A. The fellows that gives them the track. They call up for track, and he gives it. He calls the tracks.

Q. You know all about this and we don't. I am just trying to find out where this man is you are referring to.

A. He was in that little office or shanty.

Q. Which side of the hard road is it?

A. Left side of the hard road going east.

Q. Left side of the hard road going north, you mean?

A. It's on Main Street on Route 24.

Q. And a man is stationed in a little office?

A. Yes, sir.

179 Q. Who was it that day?

A. Some man. I don't know what his name is.

Q. How long has he been employed by the P. & P. U.?

A. Yes, sir.

Q. Has he been there for months?

A. Yes, sir, somebody there all the time.

Q. Is he the man that put in the call for you to come, or was it Heilman?

A. They told me Mr. Heilman called up and wanted protection.

Q. You didn't get the call at all, but somebody else got the call and told you about it?

A. Sure. They always do.

Mr. Knoblock: I move the entire testimony with reference to that call be stricken.

The Court: I think it may be. I don't think it is material. That all may be stricken.

It would save time if we would get to the facts.

Q. When you got there, there wasn't anybody around?

A. Nobody but the fellow that works over there.

Q. What happened when you got there?

A. They told me the engine was over there at the crossing on Washington Street.

Q. The engine was over where?

A. Over on Washington Street there, on Washington Street.

Q. In other words, it was about—It was near the Franklin Street bridge, then?

A. It was way up this way from the Franklin Street bridge; right there where you go into the P. & P. U. yard on Washington Street.

Q. You say it was on the Washington Street crossing?

180 A. Yes, sir.

Q. That is the crossing that is near what we might call Mr. Strickfaden's garage? Is that the place you are referring to?

A. Yes, there is a garage there and a bowling alley.

Q. That is not on T. P. & W. property? It is on P. & P. U. property?

A. Yes, right there, and there is a tavern.

Q. There is where you found the engine?

A. Yes, sir.

Q. Was anybody around there then?

A. No, sir.

Q. What did you do?

A. Mr. Heilman wanted me to get on the engine with him.

Q. Heilman was there?

A. Yes, he was there. The crew was there, too.

Q. The crew was there?

A. Yes.

Q. Who was the crew?

A. Mr. Heilman was the only one I knew. The rest were all strangers to me.

Q. Then where did you go?

A. I went over to the P. & P. U. and got the cut of cars over there, down to the junction and got the cars.

Q. Is this the junction you first went down?

A. Yes, sir.

Q. Where is this stoning supposed to have occurred?

A. On Route 24 there by that spillway between the river bridge and this junction.

Q. Did you see the men, actually see them throw the rocks?

A. Yes.

181 Q. Whom did you see?

A. The fellows I named.

Q. Every one of them? Is that right?

A. Yes, sir.

Q. That was Wilson, Underwood and who else?



A. And Rosskamp.

Q. Who else?

A. Gibbons. I guess I named Gibbons, didn't I?

Q. Who else?

A. St. Clair.

Q. Who else?

A. That was all.

Q. You didn't see anybody pull the air on the train, did you?

A. No, we was in the engine then. They were throwing rocks.

Mr. Knoblock: I disclaim the latter part of the answer.

Q. You didn't see anybody pull the air on the train?

A. No, sir.

Q. You don't know who did it?

A. No, sir.

Q. You claim there was another stoning near the Illinois River bridge, is that right?

A. Yes.

Q. Who did you actually see throw rocks there?

A. Same bunch of fellows.

Q. You saw everyone of them do it?

A. Yes, sir.

Q. No different men or new men?

A. There was other fellows there, but I didn't know  
182 what their names were.

Q. And the matters that you have testified to here this morning are all the matters you know of concerning the difficulties since this strike was started, is that right?

A. Yes, sir.

Q. And you say that in this engine cab at the time you are mentioning here at the Illinois River bridge there were six or seven in the cab besides yourself?

A. Yes, sir.

Q. Were some of them guards?

A. No, sir.

Q. A normal crew is three?

A. Yes. They have students on there.

Q. They had about three or four students in this cab,—

A. Yes, sir.

Q. —is that right?

A. Yes, sir.

Q. You didn't see anybody strike Merrill that night with a club, did you?

A. No, sir.

Q. You didn't see any of the pickets on the night of December 30 use a club on anybody, did you?

A. No, sir.

Q. The fact of the matter is you have never seen them use a club on anybody at any time, have you?

A. No, sir.

Mr. Knoblock: That's all.

183 *Redirect Examination by Mr. Heyl.*

Q. How many men pickets did you observe during the time the strike was in force from December 28, 1941, until last Saturday when we filed this complaint who had clubs in their hands?

A. Well, they had clubs at various times. They didn't have them all the time.

Q. During the entire period, how many men did you observe having clubs?

A. Oh, there would be four or five have a club.

Q. Out there?

A. At the gate at the lane that goes to the yard office.

Q. Was that true each time you passed?

A. Yes, sir.

Q. Did you notice any men having clubs in their hands located at other picket lines?

A. Yes, sir.

Q. Where?

A. At the viaduct.

Q. Where?

A. As the "Tip up" goes into East Peoria. It is in East Peoria where the viaduct—

Mr. Knoblock: I object unless the parties are identified.

Mr. Heyl: We will identify them by name before we get through:

The Court: Let's get along, or we won't get to it.

Mr. Heyl: I am trying as fast as I can.

Q. Where is this viaduct?

A. In East Peoria.

Q. That takes in a lot of territory. Can't you tell me where it is?

184 A. I can't tell you the name of the street. I don't go by the name of the street.

Q. Is it over Lake Erie and Nickel Plate on Route 150?

A. Yes, sir.

Q. Was it near the west end of that?

A. Yes, sir.

Q. How many did you see there, or see there with clubs in their hands?

A. Oh, there would be four or five at a time.

Q. How often would you see them?

A. Every day I happened to be down there.

Q. Is that on the line of the plaintiff?

A. Yes.

Q. What other picket lines did you observe where there were men with clubs in their hands?

A. Those are the only two places I have been.

Q. Can you name these men who had the clubs?

A. It was at night. I never saw them.

Q. In the day time when you went over the line, did you observe any men with clubs?

A. They had clubs at different times there.

Q. Can you give us the names of any of those?

A. No, sir.

Mr. Heyl: All right.

*Recross Examination by Mr. Knoblock:*

Q. You never saw any of them use a club on anybody at any time?

A. Not any person, no.

Mr. Knoblock: That's all.

185 Mr. Heyl: Before this witness leaves the stand.

I want to direct attention to a paragraph on page 23 of the complaint, the second portion, the allegation which makes the allegation with reference to the incident testified to by this witness of the train that was stopped and stoned on West Washington Street near the Illinois River bridge. There is a direct allegation in the complaint.

The Court: All right. Is that all with this witness?

Mr. Heyl: Unless they want to ask him something about that.

Mr. Knoblock: We have already asked him about that.

Mr. Heyl: One more question.

*Re-redirect Examination by Mr. Heyl.*

Q. When you approached that intersection of the lane and the highway that night, as this truck neared the intersection, were you able to see it?

A. Oh, yes, you could see the lights of the reflection down the road.

Q. What is that?

A. You could see the lights reflect down the road.

Mr. Heyl: All right! That's all.

The Court: We will take a recess, gentlemen, for five minutes.

(Recess.)

186 RICHARD TAYLOR, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Richard Taylor.

Q. And where do you live, Mr. Taylor?

A. Hamilton, Illinois.

Q. Will you please keep your voice up?

A. Yes, sir.

Q. What is your age?

A. Forty-six.

Q. What is your business or occupation?

A. Conductor.

Q. And are you employed by the plaintiff in this case?

A. Yes, sir.

Q. What employment were you engaged in on December 30, 1941?

A. Hired out to the T. P. & W. Railroad.

Q. You were how?

A. Hired out to the T. P. & W. Railroad.

Q. What were you doing on December 30?

A. Brakeman.

Q. On what train?

A. Extra 41 west.

Mr. Knoblock: I can't hear that.

(Answer read by reporter.)

Q. From what point does that train start?

A. Peoria yards.

187 Q. What was the destination of the train?

A. Hamilton, Illinois.

Q. Will you tell the court the name of the engineer?

A. Homer Gulick.

Q. And the fireman?

A. I can't call his name.

Q. McAvoy?

A. McAvoy.

Q. And who was the conductor?

A. I was.

Q. And any other conductor on the train?

A. Mr. Sweet.

Q. Were there any other persons on the train?

A. Two student brakemen.

Q. Do you know their names?

A. One of them was Malone, and the other one was Smith.

Q. Was there or not a student fireman on the train?

A. Yes, sir.

Q. What was his name?

A. I can't call that.

Q. Was it Rudel?

A. No.

Mr. Knoblock: I didn't get his answer.

(Answer read by reporter.)

Q. What time did that train leave Peoria?

A. I don't just know.

Q. Was it in the morning or afternoon?

A. Morning.

Mr. Knoblock: I object to the leading form of the 188 question.

The Court: It may stand.

Q. Did anything occur in connection with the movement of that train after it left Peoria on that day, and before it reached Hamilton?

A. Well, we was stoned at Sciota.

Q. Where is Sciota located?

A. West of Bushnell.

Q. In McDonough County?

A. McDonough County, yes, sir.

Q. Will you describe to the court the circumstances of the stoning of the train?

A. We had spotted cars to the elevator and was leaving town when we were stoned.

Q. And what part of the train was stoned?

A. Caboose.

Q. What damage, if any, was there to the caboose?

A. I couldn't say that there was any.

Q. Were you in the caboose?

A. Yes, sir.

Q. How many stones, if you know, were thrown at the caboose?

A. Well, I couldn't say. There was a number of them, probably a handful.

Q. Did you see the persons who threw the stones?

A. No, sir.

Q. Was it dark or light?

A. Dark.

Q. Now, did the train proceed to its destination?

A. Ferris, Illinois.

189 Q. What happened at Ferris, Illinois?

A. We had set one on the transfer and was leaving town,—

Q. What happened?

A. —and we got some more stones.

Q. Was it dark there?

A. Yes, sir.

Q. Where were those stones thrown? At what part of the train?

A. They was thrown at the caboose.

Q. Where were you?

A. In the caboose.

Q. Now, at Ferris and at Sciota where this stoning took place, was this railroad near a highway?

A. Yes, sir.

Q. What highway?

A. Well, I don't know what one it is that comes in from the south. It happened at the crossing at Sciota.

Q. Does the highway parallel the road?

A. No, it crosses.

Q. It crosses?

A. East and west.

Q. Were there any windows broken at that time?

A. No, sir.

Mr. Knoblock: I object.

The Court: He has answered.

Q. Was there anything further that happened on that train before it reached its destination?

A. We were going into Hamilton at what is known as Taber's Switch,—

Q. T-a-b-e-r?

A. Yes, sir. —and we received some more rocks.

190 Q. Was that stoning of the train at that time of the same character as the one you have described before?



A. Yes, sir. Route 94 crosses there.

Q. Route 94?

A. Yes, sir.

Q. What time did you reach Hamilton?

A. About 9:30, I believe, as near as I can remember.

Q. Now, what kind of a train were you operating that day? The day that this occurred?

A. A freight train.

Q. How many cars when you left Peoria?

A. Twenty-six, I believe.

Mr. Knoblock: I didn't get that.

(Answer read by reporter.)

A. Twenty-six cars.

Q. And did the train, the size of the train, increase or decrease as you traveled on to Hamilton?

A. Decreased.

Q. How many cars did you have when you got to Hamilton?

A. About nine and one; nine loads and one empty.

Q. Where were the loads for? What was the destination of the cars that were loaded?

A. Seven for Keokuk.

Q. What?

A. Seven for Keokuk, and one empty for Keokuk.

Mr. Knoblock: I didn't get it.

Q. Seven for Keokuk, and one empty for Keokuk, Iowa, is that what you said?

A. Yes, sir.

191 Q. Did you deliver these cars to any other road?

A. Not until the next morning.

Q. And where did you deliver them the next morning?

A. C. B. & Q. at Keokuk.

Q. At Keokuk?

A. Yes, sir.

Q. Speak a little louder.

A. Seven to the C. B. & Q., and one to the Rock Island.

Q. Where was that delivery made?

A. Down in the "Q" yards.

Q. At Keokuk, Iowa?

A. Yes, sir.

Q. The morning of December 31, 1941, did you take these eight cars with your engine over to Keokuk, Iowa?

A. Yes, sir.

Q. And make delivery there?

A. Yes, sir.

Q. Then what did you do on December 31, 1941, after you delivered these cars to Keokuk, Iowa?

A. We picked up at Keokuk, and came back east.

Q. What did you pick up at Keokuk?

A. Eleven loads.

Q. And where did you get those eleven loads? You mean eleven cars?

A. Yes, eleven cars, at the Union Depot at Keokuk.

Q. Keokuk, Iowa?

A. Yes, sir.

Mr. Knoblock: I didn't get the place.

(Answer read by reporter.)

Q. Were those eight cars?

192 A. Yes, sir.

Q. Can you tell the court in a general way what these cars were loaded with?

A. There were nine cars of carbides, and two cars were tanks.

Q. Do you know the destination of these cars?

A. The nine cars went to Chenoa to the Chicago & Alton.

Q. What?

A. Chicago & Alton. Two of them went to Effner.

Q. Effner, Indiana?

A. Effner, Indiana, and the Pennsylvania.

Q. Did you deliver these cars on your train?

A. No, sir, brought them to the Peoria yards.

Q. Now, what time did you leave Hamilton on December 31, 1941?

A. About 7:30.

Q. In the evening?

A. Morning.

Mr. Knoblock: 7:30 in the morning is when they left Keokuk or Hamilton.

Mr. Elliott: Hamilton.

Q. You went to Keokuk, then at 7:30 that morning?

A. We left Hamilton at 7:30. We came back from Keokuk.

Q. Coming this way?

A. Yes.

Q. That is what I thought. You had, prior to that time, delivered these cars in Keokuk, and picked up your load at Keokuk?

A. Yes, sir.

Q. At 7:30 A. M. you left Hamilton for what point?

A. Peoria yards.

Q. Was the train operated by the same men that you had the day before?

193 A. Yes, sir.

Q. Now, did anything happen to that train, or in connection with that train, before you reached the East Peoria yards?

Mr. Knoblock: My dates and time don't check.

Are you referring to December 31, and you are asking if he left Hamilton?

Mr. Heyl: He went over on the 30th, and left the next morning to come back.

Mr. Knoblock: What day were you in Keokuk?

Q. What day were you in Keokuk?

A. 31st; morning of the 31st.

(Question and answer read by reporter.)

Q. Did anything happen with that train, or in connection with that train, before it reached the yards of the plaintiff in East Peoria?

A. We had no more trouble until we got east to the Illinois River bridge.

Mr. Elliott: Illinois River bridge?

A. Yes, sir.

Q. That is in East Peoria?

A. Yes.

Q. Where is that with reference to the intersection of West Washington Street and the bridge?

A. Well, I don't know as to that; just as you pull onto the bridge, the river bridge.

Q. Do you know the street?

A. It is Washington Street, isn't it?

Q. Yes.

A. We had just got across the crossing.

194 Q. That is what we call the "lower bridge" in Peoria?

A. Yes, sir.

Q. The old bridge, is that right?

A. Yes, sir.

Q. What happened there?

A. We got a few more rocks thrown at the caboose.

Q. What is it?

A. A few rocks thrown at the caboose.

Q. And did you see the persons that threw the rocks?

A. No, sir.

Q. Was that light or dark? Was it light or dark at that time?

A. It was dark.

Q. And then what did you do?

A. Proceeded on to the yards. We didn't stop.

Q. You continued on?

A. Yes, sir.

Q. You were in the caboose at the time you crossed West Washington Street?

A. Yes, sir.

Q. Can you tell us about how many stones were thrown at the train?

A. No, sir.

Q. More than one?

A. Well, I wouldn't—

Q. You heard them, didn't you?

A. Yes, I heard them.

Q. Can you tell the court what it sounded like?

A. Well, it sounded like a couple; two.

Q. You proceeded on?

A. Yes, sir.

195 Mr. Heyl: You may cross examine.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Taylor, how long have you lived at Hamilton, Illinois?

A. How long?

Q. Yes.

A. About twenty years.

Q. You say your age is now forty-six, and that your business is that of a railroad conductor, is that right?

A. Yes, sir.

Q. And you did not enter the employ of the plaintiff until December 30, 1941?

A. Yes, sir.

Q. Where had you done railroad work before that?

A. T. P. & W.

Q. When?

A. Up until 1929.

Q. I see. Have you ever been employed by any road other than the T. P. & W.?

A. No, sir.

Q. You say on the train you left Peoria on to go to Hamilton, Illinois, Homer Gulick was the engineer, and a

gentleman by the name of McAvoy was the fireman, is that right?

A. Yes, sir.

Q. Do you know McAvoy's first name?

A. No, I don't.

Q. Do you know where he lives?

A. He lives in East Peoria.

Q. And do you know when he went to work for the

T. P. & W.?

196 A. No, I don't.

Q. You say a gentleman by the name of Sweet was the conductor with you, apparently two conductors?

A. Yes, sir.

Q. Was he a student conductor?

A. No, sir, I was the student conductor.

Q. You were the student conductor?

A. Yes, sir.

Q. This man Sweet, do you know his first name?

A. No, I don't.

Q. Do you know where he lives?

A. He lives in Peoria.

Q. He lives here in Peoria, Illinois?

A. Yes, sir.

Q. Do you know when he went to work for the T. P. & W.?

A. No, sir.

Q. Do you know whether or not he had worked for any other roads?

A. No, sir.

Q. You say there were two brakemen, Malone and Smith. Do you know Malone's first name?

A. Richard.

Q. Do you know where he lives?

A. At Hamilton.

Q. Hamilton, Illinois? And Smith, do you know his first name?

A. No, I don't.

Q. Do you know where he lives?

A. I believe he lives in Peoria.

Q. You think he lives here in Peoria?

A. Yes, sir.

197 Q. You don't know what time of day you left Peoria that day, do you?

A. Not for sure. I wouldn't say for sure.

Q. And you say the first knowledge that you had of any stoning was at Sciota, Illinois, west of Bushnell?

A. Yes, sir.

Q. How far is that from Peoria, approximately?

A. Well, I would say sixty-five or seventy miles.

Q. Did that occur in the day time or night?

A. Night.

Q. You don't know who threw the stones?

A. No, sir.

Q. You are not able to identify anybody?

A. No, sir.

Q. And there was no damage done, as I understand you to say, to the caboöse?

A. No, sir.

Q. Then the next time was at Ferris, Illinois. About how far is that from Peoria?

A. It's about a hundred miles.

Q. You don't know who threw the stones there?

A. No, sir.

Q. You weren't able to identify anybody?

A. No, sir.

Q. And again no damage was done to the caboöse?

A. No, sir.

Q. And at Taber's Switch you don't know who threw the stones there?

A. No, sir.

Q. You are not able to identify anybody?

A. No, sir.

198 Q. How far is that from Peoria?

A. About a hundred and twelve miles.

Q. And you got into Hamilton at 9:30, you say?

A. Yes, sir.

Q. Is that in the night or morning?

A. Night.

Q. Then on the morning of December 31, 1941, you proceeded with the train to Keokuk, Iowa, is that right?

A. Yes, sir.

Q. How far is Hamilton from Keokuk, Iowa?

A. A mile.

Q. About one mile?

A. They call it a mile.

Q. And you left Hamilton the morning of December 31 at 7:30, is that right?

A. Yes, sir.

Q. You were bound for Peoria, and there was nothing



unusual happened until you got east of the Illinois River bridge in East Peoria?

A. Yes, sir.

Q. About what time of the evening did you arrive there?

A. Well, I would judge around 8-40.

Q. P. M., that would be?

A. Yes, sir.

Q. And a couple of rocks hit the caboose,—

A. Yes, sir.

Q. —is that right?

A. Yes, sir.

Q. You don't know who threw them?

199 A. No, sir.

Q. You weren't able to identify anybody?

A. I couldn't identify them.

Q. During that period of time, you heard nobody make any threats to you or anyone else?

A. No, sir.

Q. And you have no idea who might have thrown those rocks?

A. No, sir.

Q. Now, the 31st was the last day that you have testified to here in court today. Have you worked since the 31st?

A. Yes, sir.

Q. And there have been no other incidents that have been brought to your attention, have there, that you know of of your own knowledge?

A. Well, I wouldn't say as to that.

Q. You don't know.

Mr. Heyl: I object to that. That isn't what he said.

Mr. Knoblock: I am just trying to find out what he means.

Mr. Heyl: I object as not cross examination.

Mr. Knoblock: All right, I will withdraw the question.

The Court: All right.

Mr. Knoblock: That's all.

*Redirect Examination by Mr. Heyl.*

Q. I want to ask you, Mr. Taylor, how long you have worked for the T. P. & W. altogether.

A. Well, I wouldn't say.

200 Q. How many years?

A. Now or prior?

Q. Prior.

A. Well, I couldn't say for sure.

Q. Have you got some idea about how many years?

A. Well, that would take back quite a ways. I went to the army in 1918, and I was railroading up to then, then when I came back I railroaded some.

Q. Until 1929?

A. No, I had quit in between.

Q. What work did you do for the railroad?

A. Brakeman.

Q. Brakeman?

A. Yes, sir.

Q. Have you any judgment about the number of years you have worked as a brakeman?

Mr. Knoblock: I object as improper and not redirect.

The Court: Do you know how many? Four, five, six or ten?

A. Four or five, I would say.

Q. Are you acquainted with Richard W. Malone, the man you said was on that train?

A. Yes.

Q. Do you know where he is now?

A. He is in the caboose sick.

Q. Where?

A. In the caboose.

Q. Unable to come to this trial?

A. Yes, sir. He was up all night.

201 Q. Where is he?

A. Over in the East Peoria yards.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

JOHN H. SWEET, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. John H. Sweet.

Q. How old are you?

A. Fifty-two.

Q. Where do you live?

A. 619 East Republic.

Q. Peoria, Illinois?

A. Yes, sir.

Q. Are you employed by the plaintiff in this case?

A. Yes, sir, I am.

Q. How long have you been employed?

A. About ten years.

Mr. Knoblock: I didn't get that.

A. About ten years.

Q. In what capacity?

A. Train dispatcher.

Q. And has that been a continuous employment?

A. It has.

202 Q. Now, on December 30, 1941, did you have anything to do with the operation of extra 41 west?

A. I did.

Q. Tell what you can about that.

A. I was conductor on the train, handled it west from the Peoria yard to Hamilton and Keokuk.

Q. What happened on that trip?

A. Well, the unusual happening, we got a few rocks cast at the caboose at Scotia, and a rock or two cast at the caboose at Ferris,—

Mr. Knoblock: I want to get these.

A. —and going down the hill after we left Elvaston, just went of Elvaston.

Q. E-l-v-a-s-t-o-n? Is that near Taber's Switch or Crossing?

A. Just east of Taber's Crossing.

Q. What occurred there?

A. Well, they hit the caboose with rocks.

Q. Mr. Sweet, I don't believe all the people can hear you. I think you can speak louder if you try.

Now, on the return trip were you conductor?

A. I was, yes.

Q. And were any of the cars in the train you took west, number 41 west, delivered at Keokuk, Iowa?

A. Yes, we delivered one the next morning at Keokuk, yes.

Q. And was that a loaded car?

A. That was a load, yes.

Q. What?

A. It was a load.

Q. What about the cars that you came back with?

203 A. We got some loads and some empties at Keokuk for the east.

Q. Brought into Illinois?

A. Yes.

Q. Then did you come east with that train?

A. Well, we picked up along the road in addition to what we had there. There was a car of gasoline for Canton that we got at Keokuk in that bunch there.

Q. What else did you pick up? Various cars?

A. Various cars along the line. We picked up five loads at Lomax, and we picked up cars on the way in.

Q. The cars at Lomax, were they delivered by any other road to you?

A. Delivered by the Santa Fe, yes.

Q. What was the destination of those cars?

A. Well, I don't know what the final destination was on all of them. Some were Peoria, East Peoria, gasoline and stuff like that.

Q. Do you know where they started from?

A. Oklahoma.

Q. What were they? Oil cars?

Mr. Knoblock: We object; no foundation.

The Court: We will save time.

What did they contain? Do you know?

A. One car was a car of gasoline. We had four box cars. I don't remember just exactly what they were. The car of gasoline was for the Martin Oil Company at East Peoria.

Q. Those cars were shipped from what point?

A. They were Oklahoma.

Mr. Knoblock: I object; no proper foundation, not the best evidence.

The Court: He may answer if he knows.

204 A. Oklahoma cars.

Q. Delivered to your road by what road?

A. Santa Fe.

Q. Is that the point where the Santa Fe delivers freight to you?

A. That is our connection, yes.

Q. Where were the cars at Keokuk? Where were they from?

A. I don't know where that car at Keokuk came from. I didn't notice the bill. I have—had a clerk on there that made the wheel report.

Q. Those cars were brought into Illinois?

A. Yes. One of them was a Canton car of gasoline, V. E. & X. car. I don't remember the number.

Q. Did anything happen as you travelled east?

A. We had one rock cast after we crossed the river.

Q. Where were you?

A. In the caboose, and that is what I heard.

Q. You heard that?

A. Yes.

Q. Do you know who threw the rock?

A. I do not.

Q. What happened following that?

A. That was the end of that run.

Q. And you delivered the train?

A. To the East Peoria yards, yes.

Q. I will ask you if you acted as pilot on extra west from Peoria to Keokuk on January 1, 1942.

A. I did not. I went down to the depot to act as pilot, but the train didn't run.

Q. What did you observe at the station in Peoria?

205 A. I went into the restaurant to get a package of cigarettes, and while I was in there an ex-conductor, Chandler, brakeman Lucas, brakeman Waller—

Mr. Knoblock: What was the last?

A. W-a-l-l-e-r, and one other man whose name I didn't know (his face was familiar; he worked over there; I knew his face), they came—Chandler did the talking and he told me—He asked me first if I saw extra 41 west the day before and I said I did. He said, "You saw what happened to that train, didn't you?" I said, "I did." He said, "We haven't really started yet. We are going to get really rough today."

Q. Then what happened?

A. He tried to discourage me.

Mr. Heyl: That's a conclusion.

Mr. Knoblock: Let him go ahead.

A. He tried to discourage me going out on that train. He said it wouldn't be safe to go on the train, that the train wouldn't get out of the East Peoria yard, that if it did it wouldn't get to Hollis.

Q. What else did he say?

A. He wanted to know anyway where I was going to ride, and I said, "The engine."

Mr. Knoblock: I am going to object to all this con-

versation because there is no such allegation in the complaint. I have a standing objection to that. Furthermore, this man Chandler he's referred to is not a defendant here, not a party to this suit.

The Court: He is a former member of the union, is he not, or is not a member?

206 Mr. Heyl: Yes.

Mr. Knoblock: I don't know.

The Court: I think he may answer. Objection overruled.

A. He told me if I intended to ride that engine I had better get behind something because they intended to take care of it.

Q. Is that R. V. Chandler?

A. Yes.

Mr. Heyl: Is Mr. Chandler in the court room? Mr. F. W. Lucas in the room? Mr. Maguire in the room, C. A. Maguire?

Mr. Knoblock: He wasn't mentioned by this man.

Mr. Heyl: Mr. C. T. Waller?

Q. Those two men were present when Chandler made that statement to you?

A. They were, yes.

Q. Are these former employees of the plaintiffs?

A. They are.

Q. Do you know G. C. Kneisley?

A. Yes.

Q. Was he there that morning?

Mr. Knoblock: I object. He didn't say anything about him.

The Court: He may answer.

A. He wasn't in that bunch.

Q. Did you see him that day?

A. Yes, when I walked down to get on the engine.

Q. Where did you see Kneisley?

A. Just outside of the station on the east side.

207 Q. Same day?

A. Yes, about half an hour later.

Q. What train was that you were going to get on?

A. It was extra 41 west. I thought I heard the engine whistle, and I came down to get on, but it wasn't, and Kneisley and Lucas met me at the door of the station, east side of the station.



Q. Is that the gentleman that answered to the name of Frank W. Lucas—the man?

A. Yes.

Q. And, Mr. Kneisley, please stand up. (Person named rises.). Is that the man?

A. Yes.

Q. Anyone with these two men?

A. No, just those two.

Q. Are these men former employees?

A. Yes.

Q. What did they say?

A. Kneisley told me practically the same thing Chandler did, that it wouldn't get out of the East Peoria yard, if it did it wouldn't get to Hollis. He tried to discourage me, and told me the same thing.

Q. What was that?

A. That it wouldn't be safe.

Q. Did you go on that train?

A. It didn't run, and I didn't go.

Q. Was there a train that did move west that day?

A. No.

Q. Was there a train that went west on January 2?

A. Yes.

208 Q. Were you on that train?

A. No, I was not.

Q. Did you see that train go west?

A. No, I didn't.

Q. Now, on December 31, 1941, what, if anything, did you observe at your home?

A. Well, it was on the 31st. There was a continuation of calling my house on the telephone.

Mr. Knoblock: What was it?

Mr. Elliott: Calling his house on the telephone.

A. They called until about 11 o'clock that night.

Mr. Knoblock: I object unless he says who he means by "they."

The Court: Yes.

Q. Tell the circumstances and what happened?

A. I was frequently called, and they wanted to know if I was the man that worked for the T. P. & W. I wouldn't be able to say who it was called because I didn't recognize the voice calling.

Mr. Knoblock: I move it be stricken.

The Court: It may stand.

Q. Did you have any experience like that before this strike?

A. No.

Q. What else did you observe at your home?

A. On January 1 in the morning, about 5 o'clock in the morning, I was called to the front door of the house, and there was two cars parked in front of the house. One was a coupe and one was a sedan. About 5 o'clock in the morning and about 5:15; the coupe left and the sedan stayed there for about thirty minutes, and it left.

209 Mr. Knoblock: You say about 5:15?

A. About 5 o'clock I saw them.

Mr. Knoblock: And 5:15 the coupe left, is that right?

A. Yes.

Mr. Knoblock: And about 5:45 the sedan left?

A. That's right.

Q. Did you observe the passengers in these cars?

A. Well, there was four men in the sedan and two in the coupe, but I didn't know the name of any of them.

Q. Did you recognize the men?

A. I recognized one or two I had seen over there working.

Q. You recognized their faces as former employees?

A. That's right.

Q. Is there any other incident I haven't asked you about that you have knowledge of?

A. Well, the night that the temporary restraining order was on, effective, I went through the gate over there, and I had been reprimanded by Gabbert, one of their men, for running the "stop" sign.

Mr. Elliott: Is Gabbert in the room?

(Person named rises.)

Q. Is that the man?

A. Yes.

Q. What did he say?

A. He said I shouldn't run the "stop" sign. He said I had been running the "Stop" going through the picket line. He said, "You have to stop for this picket line." I did, and I believe it was that man Newdigate that came—

Q. Is Newdigate in the court room? (Person named rises.) Is that him?

210 A. Yes. I asked him how things was going, and he said, "They have a temporary restraining order for five days, and they are going to keep peace in the

family, and when that is over we will take after them again."

Q. Is that Newdigate?

A. Yes.

Q. Is he one of the defendants in this case?

A. Yes.

Q. What else happened?

A. That's all.

Q. Any other incident?

A. No, that's all that I have been mixed up in.

Q. I personally do not understand this "Stop" sign. Will you tell the court what this is?

A. In the first place, they had a nail keg in the middle of the road with a fire in it, and we had to stop or run over the nail keg, and they would have two or three men standing in the road, and you had to wait for them to get out of the way or run over them.

Q. Is that the private lane?

A. That leads from our round house to the road.

Q. Route 24?

A. Yes. It was in the road. The nail keg was in the road about fifteen or twenty-feet from the pavement of the hard road.

Q. Is that lane the property of the plaintiff?

A. That is.

Q. A private lane?

A. That is.

Q. Is that the only means of reaching the property from Route 24?

211 A. With an automobile, yes.

Q. That is what I mean.

A. Yes.

Mr. Heyl: That's all. Cross-examine.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Sweet, how long have you worked for the T. P. & W.?

A. About ten years.

Q. You say that you were a train dispatcher there?

A. I am, yes.

Q. That is a semi-official position, is it?

A. Supposed to be, yes.

Q. Then you left that to become a conductor, is that right?

A. Well, I—

Q. Is that right?

A. All right! O. K.! Yes.

Q. And on this trip of December 30, 1941, as you went west on extra 41, at Seiota where you say one or two rocks were thrown, you don't know who threw those rocks, do you?

A. No.

Q. You don't know where they came from, do you?

A. I haven't any idea.

Q. No damage was done, was it?

A. Nothing more than marking up the side of the caboose where they hit.

Q. No windows broken?

A. Not on our caboose.

Q. And the same thing is true at Ferris?

A. Yes.

212 Q. You don't know who threw those rocks?

A. No.

Q. Do you know where they came from?

A. No.

Q. The same thing is true at Elvaston?

A. Yes.

Q. You don't know who threw them there?

A. No.

Q. When you came back and you got east of the East Peoria bridge, the caboose was hit by one rock?

A. Yes.

Q. You don't know who threw that?

A. No.

Q. You don't know where it came from?

A. No.

Q. This man Chandler you speak of, he did all the talking?

A. He did at the restaurant.

Q. When Lucas and Waller and one man was there you didn't know, Chandler is the only one that did any talking?

A. That's right.

Q. The rest of the men kept still?

A. That's right.

Q. And then outside you saw Kneisley and Lucas, is that right?

A. That's right.

Q. Kneisley said about the same thing Chandler did?

A. That's right.

Q. Lucas never said anything there, did he?

A. No.

Q. Regardless of what they said, if the train had  
213 run you were going?

A. I was going, yes.

Q. There wasn't any train that went west that day?

A. That's right.

Q. On these telephone calls you say you received December 31, '41, you don't know who called you, do you?

A. No.

Q. You couldn't place the voice of any man or woman that called you there?

A. No.

Q. And on January 1, 1942, you spoke about two cars parked in front of your house. There wasn't a one of those men that got out of those cars, did they?

A. No.

Q. There wasn't a single threat made to you from those automobiles that day,—

A. No.

Q. —isn't that right?

A. That's right.

Q. Gabbert, you said, said something to you about stopping, is that right?

A. That's right.

Q. There never was an occasion they failed to let you through, was there?

A. No.

Q. And you have told all that you know about this situation, is that right?

A. That's right.

Q. Did you ever have conductor experience prior to  
214 this trip that you took on extra 41 west on December 31, 1941?

A. I have, yes.

Q. On what?

A. Midland Southwest Railroad and on the Grand Trunk Pacific. The Grand Trunk Pacific was about 1913.

Q. What run did you make?

A. Baker, Saskatchewan and Edmundton, Alberta.

Q. Just the one year of 1913?

A. 1913 just temporary.

Q. How long were you on that run?

A. I was on it for about six months.

Q. And the first part of 1913, or latter part of 1913?

A. That was in the summer part of the year because I was yardmaster at Edmondton that winter.

Q. What other road?

A. Midland Southwest, a part of the Georgia and Florida now.

Q. What year were you there?

A. 1912 and 1913; part of the year of '13.

Q. What runs did you make down there?

A. Local freight.

Q. Since 1931 you have never had any experience as a conductor?

A. That's right.

Q. And you went out this day?

A. That is right.

Q. Why did you leave those roads as a conductor?

Mr. Heyl: I object as immaterial why he left.

The Court: I think he may answer if he had any particular reason.

A. It wasn't my line of work.

215 Q. Did you get a service letter from them?

A. I never had a service letter in my life from any railroad.

Mr. Knoblock: That's all.

*Redirect Examination by Mr. Heyl.*

Q. What is your line of work?

A. Train dispatcher, telegraph operator and general accounting, stuff like that.

Q. Have you been in railroad work all your life?

A. I have since 1907.

Q. Before you came to the T. P. & W. About ten years?

A. I was with the Texas-Pacific Railroad at Fort Worth, Texas, and Big Spring, Texas.

Q. What capacity?

A. Train dispatcher.

Q. How many years did you work for that road?

A. I was with them about two years.

Q. Then what road?

A. Before that I was with the Missouri-Pacific Railroad, and I worked for the Santa Fe and Atlantic Coast Line. In fact, I have worked for probably fifteen railroads in the last twenty years, maybe more.



Q. In what various capacities?

A. Train dispatcher, chief dispatcher.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

216 R. F. McKINNEY, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. R. F. McKinney.

Q. Where do you live?

A. 507 North Street.

Q. Peoria, Illinois?

A. Peoria.

Q. What is your age?

A. I am thirty-one.

Q. What is your business or occupation?

A. I am a transit man from the engineering department of the T. P. & W.

Q. How long have you been employed by the T. P. & W.?

A. A little over eight years.

Q. And in what capacity?

A. I have been general storekeeper, and most of my time has been spent in the engineering department.

Q. Are you familiar with the railroad of the plaintiff?

A. Yes, sir.

Q. And I will ask you if you had anything to do with the train known as extra 43 west on December 29, 1941?

A. Yes, sir, I was acting as head brakeman.

Q. Had you had that experience before?

A. No, sir.

Q. And what were you doing on the train? Where  
217 were you stationed on the train?

A. I was on the engine.

Q. What time did that train leave East Peoria, and what was its destination?

A. It left East Peoria at about 11 o'clock, as I remember it.

Mr. Knoblock: In the morning or evening?

A. In the morning, and the destination was Hamilton, Illinois.

Q. A freight train?

A. A freight train, yes, sir.

Q. Now, will you tell us who the other persons were on that train as the operators or employees?

A. The conductor was Mr. Carnarius.

Mr. Knoblock: How do you spell that name?

Mr. Elliott: C-a-r-n-a-r-i-u-s.

A. E. P. Owens was another brakeman. E. A. Lawson was acting as pilot. He is roadmaster on the western division. Ed Tucker was the fireman. L. C. Ward was acting as engineer, and there were two special agents. I don't know their names.

Q. Now, did anything happen in connection with that train as it traveled westerly toward Hamilton?

A. Yes, at Sciota. Darkness had fallen. It was about 7 o'clock and, as we went by the depot at Sciota, I noticed a car on the road crossing just west of the depot, and as we went by the crossing I saw three men come from alongside of the car, and something struck the side of the cab.

Mr. Knoblock: Of the engine?

A. Of the engine cab, yes, sir.

Q. You were riding on the engine?

A. Yes, sir, on the fireman's side.

218 Q. What else did you observe?

A. Not a thing. The rest of the trip was uneventful. We tied up in Hamilton a little after 8 that evening.

Q. That was on December 29, 1941?

A. Yes, sir.

Q. Now, did you have anything to do with extra 43 east on December 30, 1941?

A. Yes, sir.

Q. Now, go back to this other incident at Sciota. I have just one question.

A. Yes, sir.

Q. Did you observe the character of the article that hit the locomotive?

A. No, sir.

Q. The sound of it?

A. Yes, sir, it sounded pretty heavy, like a brick or something heavy.

Q. Where did it strike?

Mr. Knoblock: I object, and move the former answer be stricken.

The Court: That it sounded heavy? I think that may stand.

Q. Where did it strike the engine? What part?

A. It sounded to me like it struck just below the window.

Q. On the cab?

A. On the cab, yes.

Q. On extra 43 east on December 30, 1941, were you on that train?

A. Yes, sir.

Q. Same capacity?

219 A. Acting in the same capacity as I was going west.

Q. Same crew on that train?

A. And the same crew.

Q. Go ahead!

A. I noticed nothing happened until we came into Peoria, East Peoria at the viaduct, at the west end of the yard.

Mr. Knoblock: The viaduct at the west end of the yard?

A. Yes, sir.

Q. Let me get straightened on that. Is this the same train coming back from Hamilton the next day?

A. Yes, sir, that is right.

Q. Where is the viaduct with reference to the Nickel Plate crossing?

A. The Nickel Plate crossing is almost underneath the viaduct.

Q. Is that the viaduct on Route 150?

A. Yes, sir, to Metamora.

Q. State Route 150?

A. State Route 150.

Q. About what time was that?

A. Well, I am not sure of the time. I think we tied up a little after 6. It was after dark.

Q. What did you see?

A. I saw a bunch of pickets down there.

Q. Where?

A. At that little—Right there where the road leads onto West Washington Street, or East Washington Street.

Mr. Knoblock: Is that what we have been calling the lane?

A. No, sir.

Q. Near the viaduct?

220 A. Near the viaduct.

Q. And near the Nickel Plate crossing?

A. Yes, sir.

Q. How many were there?

A. There were several; four or five at least.

Q. Did you recognize the man either by name or by appearance as former employees of the railroad?

A. No, sir, it was too dark.

Q. What happened?

A. Something struck the cab again.

Q. Where?

A. I would say on the roof that time.

Q. What was the sound?

A. Something heavy hit the engine again.

Q. And what time, with reference to the time you passed under the viaduct?

A. At the same time.

Q. All right! Now, will you tell me what other train you operated since the strike and prior to the time this injunction was issued?

A. On December 31 I went east on extra 40 east.

Mr. Knoblock: What?

A. Extra 40 east.

Q. What was the destination of that train?

A. That was Effner, Indiana.

Q. From what point?

A. Peoria yard.

Q. Same position? Did you occupy the same position on that train?

A. Yes, sir, and as a pilot.

221 Q. A pilot?

A. Yes, sir.

Q. What about the crew?

A. A fellow named Leasure was the fireman.

Mr. Knoblock: How do you spell that?

Mr. Elliott: L-e-a-s-u-r-e.

A. Compton was the engineer, Jacob Armstrong was conductor, Lyndal Douglas was the brakeman, another Brakeman Handley, I think his name was.

Q. What date was that?

A. That would be December 31.

Q. What did you have in that train in the way of cars?

A. I don't know.

Q. Do you know what the destinations of the cars were? Do you know the destinations of the various cars?

A. Yes, sir, there were several empties, I know, to be

set here and there at various stations along the line, but I didn't pay much attention to what was in them.

Q. Did you go to Effner?

A. Yes.

Q. Deliver some of the cars from Illinois into Effner, Indiana?

A. Yes, sir.

Q. How many cars?

A. I think we went into Effner with about four cars.

Q. Now, on the return trip from Effner, Indiana, to Peoria with that same crew, what happened, if anything, along the way?

A. At Fairbury we went into a back track just west of the depot on the north side to spot five grain cars at the elevator.

Q. What do you mean by "spotting"?

222 A. You set the car at the elevator so it is already for the spout to be stuck into the car to load grain and, to get into this back track off of the passing track, it was necessary to line the switch for the back track and also take the derail off the rail. We went down in there and spotted the cars, and cut off the engine and one car which we were not leaving, and the engineer stopped and I looked out around the engine (I was riding the rear end), and the derail had been thrown back on the track again.

Q. While you were operating?

A. Yes, sir.

Q. What was the result of throwing the derail?

A. Nothing; the engineer saw it.

Q. What would have been the result if he hadn't noticed it?

Mr. Knoblock: I object; speculative.

Q. What effect does a derail have?

The Court: He may answer.

A. If the derail hadn't been observed, it would have put the engine on the ground. That is the purpose of it.

Q. Did you see anyone around there?

A. No, sir, I didn't, although a car kept circling around, but I didn't notice who was in the car, or who it was.

Q. Do you know when the derail was thrown?

A. It must have been sometime after we—

Mr. Knoblock: I object to this.

The Court: Do you know when the derail was thrown?

A. No, sir.

Q. Was the derail thrown when you went in with these cars to spot them?

223 A. Yes, it had to be taken off to get in there.

Q. When you came back out, you found it back on?

A. Yes, sir.

Q. Do I understand this occurred sometime while you were making this switching?

A. That's right.

Q. When was that with reference to the time you saw this car? The automobile circling around?

A. At the same time.

Q. Did you observe whether the car had any passengers in it?

A. As I remember, it had two, the driver and another passenger in the front seat. It was a sedan.

Q. How many times did you see that car circling around the point where this switching was being done?

A. Three or four times. It crossed the track.

Q. This was at Fairbury, Illinois?

A. Yes, sir.

Q. Livingston County?

A. That's right.

Q. As you came west with that train, what happened, if anything, after you left Fairbury?

A. At Washington was the next incident.

Q. That is in Tazewell County?

A. Washington, in Tazewell County. Just before we reached the Alton crossing there, rocks were thrown. I guess they were rocks; missiles of some sort were thrown and hit the cab. I was standing behind the engineer. Something hit the windshield and also the window glass, and broke the glass out of both.

Q. I didn't get the last part of your answer.

224 A. Broke the glass in both the window and the windshield.

Q. Of the locomotive?

A. Of the locomotive.

Q. Did you observe—Was that on the engineer's side of the train?

A. Yes, sir.

Q. Now, what did you observe with reference to the persons that threw these articles?

A. I didn't see them. I didn't see them at all.

Q. Did you see anything else?



A. No.

Q. Did you see that automobile again you saw at Fairbury?

A. No, sir.

Q. Now, what happened at East Peoria when that train reached East Peoria?

A. I heard something strike the side of the engine at Farmdale just before we reached East Peoria.

Q. Farmdale is how far from East Peoria?

A. I would say it is about two to three miles east of the East Peoria yards.

Q. Where did those articles strike the train?

A. It sounded to me like they hit the tender and missed the engine.

Q. You were riding on the engine?

A. Yes, sir.

Q. Did you see anyone in connection with that transaction?

A. No, sir.

Q. Let's go back to Cruger. Did anything happen at Cruger?

A. No, sir, not that I know of. Nothing happened on the engine.

Mr. Heyl: You may cross examine.

225

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Kinney, you live here on North Street in Peoria?

A. Yes, sir.

Mr. Heyl: May I ask one more question?

*Direct Examination by Mr. Heyl (Resumed).*

Q. Did you bring any cars from Effner, Indiana, on your return trip into Illinois?

A. I don't believe they were from Effner. I am not sure about that.

Q. Did you have the same engine on this train from Effner, Indiana, until you reached Peoria?

A. Yes.

Q. That was the same engine and the same tender?

A. Yes.

Q. And was the same engine that you used from Peoria to Effner, was it not?

A. That's right; yes, sir.

*Cross-Examination by Mr. Knoblock (Resumed).*

Q. You say that you were a transit man in the engineering department?

A. Yes, sir.

Q. Have been there about eight years?

A. Yes.

Q. What are the duties of a transit man?

A. Civil engineering; surveying.

Q. That has nothing to do particularly with running a railroad engine?

226 A. No, sir.

Q. The fact is you never run a railroad engine before December 29, 1941, had you?

A. I have been out on work trains considerably, and I have been around them, so that I was more or less used to the operation of the trains.

Q. But you yourself had never been employed in any capacity of that kind prior to that date?

A. No, sir.

Q. And the first time you went out you were acting as head brakeman?

A. Yes, sir.

Q. On extra 43 west?

A. Yes, sir.

Q. Now, on that train, its destination being Hamilton, the conductor was a man by the name of Carnarius?

A. Yes, sir.

Q. What is his first name?

A. Clarence.

Q. Where does he live?

A. I don't know. I couldn't tell you that.

Q. Does he live here in Peoria?

A. I think he does.

Q. And the brakeman under you, a student brakeman, apparently this E. P. Owens?

A. Yes.

Q. What was Carnarius's work before he became a conductor on this trip?

A. I think he was a car foreman.

227 Q. And E. P. Owens had never worked as a brakeman before?

A. No, sir.

Q. Where did he work before?

A. On the "rep" track.

- Q. On the "rep" track?  
A. Yes, sir.  
Q. Where does he live?  
A. I think he lives in East Peoria.  
Q. Now, this E. A. Lawson, what was his work before he went out on this trip?  
A. He is a roadmaster.  
Q. How long had he been with the T. P. & W.?  
A. I can't answer that. I don't know.  
Q. How long had Carnarius been with the T. P. & W.?  
A. I don't know that.  
Q. How long had Owens been with the T. P. & W.?  
A. I don't know.  
Q. In fact, he hadn't been with them before?  
A. Who is that? Owens?  
Q. Owens.  
A. He has been here at least five years.  
Q. He is the man that worked on the "rep" track? This  
E. A. Lawson, you say he was a train dispatcher before?  
A. No, roadmaster.  
Q. Where does he live?  
A. In LaHarpe, Illinois.  
Q. Now, Ed Tucker, you say, was the fireman?  
A. Yes, sir.  
228. Q. What was his work prior to this trip here?  
A. He has worked in the round house, and I think the machine shop.  
Q. In what capacity?  
A. I don't know the various capacities he has worked at. He is a machinist, I think.  
Q. How long had he been with the T. P. & W.?  
A. I don't know that.  
Q. Where does he live?  
A. I think in East Peoria, but I am not sure.  
Q. You say L. C. Ward was the engineer, is that right?  
A. Yes, sir.  
Q. What was his work prior to being an engineer?  
A. A hostler.  
Q. Where does he live?  
A. He lives in Peoria.  
Q. Now, there were two special agents on that train?  
A. Yes, sir.  
Q. You know special agent Kipling, don't you?  
A. Yes, sir.  
Q. You know special agent Howe, don't you?

A. Yes.

Q. You know special agent Thompson, don't you?

A. Yes, sir.

Q. Those two special agents were neither one of those men?

A. No.

Q. They carried guns, didn't they?

A. Yes, sir.

Q. They were loaded, too, weren't they?

A. I don't know.

229 Q. And they were there in the cab of the train?

A. One was in the cab, the other in the caboose.

Q. And that was on December 29?

A. Yes, sir.

Q. Do you know where those two men that carried those guns came from?

A. No, sir.

Q. Do you know where they live?

A. No, sir.

Q. They were with you on the return trip?

A. Yes, sir.

Q. And how many guns did each one of them have?

A. As far as I know, one.

Q. There may have been others?

A. There may have been.

Q. What kind of a gun was it you saw?

A. It was a revolver. What calibre and kind I don't know.

Q. 38 or 45? Do you know?

A. I don't know.

Q. Did they have any sawed-off shotguns?

A. No, not that I saw.

Q. None that you saw?

A. None.

Q. Have you made any more trips with those special agents?

A. Not with those two.

Q. But on the other trips you have made, you have had special agents on there?

A. Yes.

Q. They carried guns?

230 A. Yes.

Q. They were loaded?

A. As far as I know.

Q. On the trip you took to Effner, Indiana, how many

• special agents did you have? One in the engine, and one in the caboose?

A. One in the engine, and one in the caboose? Yes.

Q. Do you know whether they had sawed-off shotguns?

A. Not that I saw.

Q. Do you know the size or calibre revolver they were carrying?

A. No, sir.

Q. They were practically by you on the trip over to Effner, and they accompanied you back, too?

A. Yes, sir.

Q. Were they the two special agents that went to Effner with you that went on 43 west? The ones that went east were other men?

A. Yes.

Q. Do you know how many special agents or men that carried guns have been employed by the T. P. & W. since December 29 to January 2?

Mr. Heyl: I object; not cross examination.

The Court: Objection sustained.

Q. How many men carried—carrying guns were on the train that came back from Effner, Indiana, to Peoria?

A. Two.

Q. Did you recognize them as ever having worked for the T. P. & W. before?

Mr. Heyl: I object to that as immaterial.

The Court: He may answer if he knows.

A. No.

231 Q. Did the special agents investigate that car that you say was circling around there at Fairbury

A. They got down on the ground, got out of the engine cab.

Q. They didn't go out to get the license number or anything of that kind?

A. No, sir.

Q. They did no more than get on the ground by the engine?

A. They rode back and forth on the engine.

Q. Have you been working as a brakeman since the 29th of December up until now?

A. No, sir, I made—when we came in from the east end, was the last trip I made.

Q. Last trip you made?

A. Yes, sir.

Q. On these two trips that you took on extra 43 west

and on the trip to Effner, Indiana, did you see anybody at any time at any place ever have any guns other than these fellows that carried the guns that were riding the trains?

A. No, sir.

Q. Now, going on this extra 43 west at Sciota at 7 P. M., you say it was dark?

A. Yes.

Q. Something struck the side of the cab? Was that just one blow?

A. Just one.

Q. You don't know whether it was a rock that was thrown or kicked up or something else? You don't know how it got there, do you?

A. I saw a fellow in the darkness there draw back his arm, and I presume that he threw something.

Q. You didn't mention that in your direct examination, did you?

A. No, I didn't.

232 Q. You don't know who that fellow was?

A. No, sir.

Q. You don't know—You were unable to identify him?

A. That's right.

Q. Now, you got to Hamilton that night about 8 P. M.?

A. Yes, sir.

Q. Then coming back from Hamilton on December 30, 1941, the trip was completely uneventful until you hit the Nickel Plate crossing, is that right?

A. Yes, sir.

Q. And you saw some individuals that you say were four or five pickets, is that right?

A. Yes, sir.

Q. It was so dark and you were so far away you were unable even to identify them as former employees of the T. P. & W.?

A. Yes, sir.

Q. If you were unable to identify them as former employees of the T. P. & W., how do you know they were pickets?

A. Well, I don't know that they were pickets.

Q. You don't know if there were pickets there then, do you?

A. No, sir.

Q. You say something hit the roof, heavy hit the roof of the cab?



A. Yes.

Q. You don't know who threw that?

A. No, sir.

Q. You don't know where it came from?

A. No, sir.

Q. You don't know whether those four or five men you saw there threw it or something threw it, or whether  
233 it came from some other source?

A. I saw one of the men on the ground raise his right arm like I did at Sciota.

Q. You didn't mention that before?

Mr. Heyl: State all you can state about it.

A. I saw one man raise his arm or make a motion of throwing, and I ducked behind the boiler head.

Q. Did he throw with his right or left hand?

A. Right hand.

Q. You don't even know those fellows that you saw were pickets?

A. No, sir.

Q. On this trip to Effner, Indiana, you say a man by the name of Leasure was fireman. What is his first name?

A. I don't know.

Q. Where does he live?

A. I don't know that.

Q. How long had he been in the employ of the T. P. & W. on December 31, 1941?

A. I don't know that.

Q. Do you know what his work was before he became a fireman?

A. No, sir.

Q. Do you know whether he had ever been a fireman on any other railroad or not?

A. No, sir.

Q. This man that you say was an engineer, Compton, do you know what his first name is?

A. No.

Q. What was he before he was that?

A. An engineer on the Santa Fe.

234 Q. Do you know when?

A. No, sir.

Q. Where does he live?

A. I don't know.

Q. Where does Leasure live?

A. I don't know that.

Q. How long had Compton been in the employ of the T. P. & W. prior to December 31, 1941?

A. I don't know.

Q. Jacob Armstrong, you say that day was conductor?

A. Yes, sir.

Q. Where does he live?

A. I don't know.

Q. What was his work prior to becoming a conductor on that date?

A. I don't know. He told me it was in train service on various other railroads.

Q. Lyndal Douglas, brakeman?

A. Yes, sir.

Q. What was his work before he became a brakeman that day?

A. I think he worked on the "rep" track.

Q. He worked on the "rep" track for the T. P. & W., is that right?

A. Yes, sir.

Q. Where does he live?

A. East Peoria, I think. I don't know.

Q. And this man Handley, do you know his first name?

A. No, sir.

Q. Where does he live?

A. I don't know that.

Q. Did he act as brakeman that day?

235 A. Yes, sir.

Q. Or student brakeman?

A. Student brakeman, I guess you would call it.

Q. What had he done before he became a student brakeman on that day?

A. I don't know.

Q. How long had he been in the employ of the T. P. & W. before December 31, 1941?

A. I don't know that.

Q. Now, this incident you referred to at Fairbury, Illinois,—

A. Yes, sir.

Q. —you don't know for sure whether that derail was thrown, of your own knowledge?

A. It had to be thrown.

Q. You didn't see it?

A. I didn't see anybody throw it.

Q. You don't know who did it, if anybody there—

Mr. Heyl: He said he didn't know.

Q. It might have been a member of the train crew on your train, as far as you know?

A. No.

Q. How do you know?

A. I lined the switch, and I rode the engine from behind, and—

Q. Now,—

Mr. Heyl: Quit breaking in on him!

The Court: What is the question?

(Question and answer read by reporter.)

A. —I was the last man. After I had thrown the derail and had passed away, I was the last man out.

236 Q. Did you at all times have under your observation the men in the caboose?

A. We left the caboose at the other end of town.

Q. They were spotting the cars?

Mr. Heyl: He said the caboose was at the other end of town.

The Court: He may answer. Just a moment!

(Question read by reporter.)

The Court: You mean by that were to spot cars?

Mr. Knoblock: That's right.

The Court: He may answer.

A. No.

Q. Who did spot the cars?

A. The conductor and myself.

Q. Describe to us how you were able to watch that derail while you were spotting cars.

A. I didn't watch the derail while I was spotting the cars.

Q. How do you know it wasn't some other member of your own train crew that might have thrown that switch back?

A. The derail was west of me, and all the other members of the crew were east of where we were working.

Q. That is just your presumption, isn't that right?

A. No.

Q. You never had them under your observation all the time?

A. The other brakemen were through town. We left cars through town.

Q. You don't know where they were until you got back there, do you?

A. They weren't up around that derail, I know.

Q. How do you know?

237 A. I didn't see them.

Q. That is the reason you have assigned, isn't it?

A. Yes, sir.

Q. You say when you got back to Washington, Illinois, a rock hit the engine cab, is that right?

A. Yes, sir.

Q. You don't know who threw that?

A. No, sir.

Q. You didn't even see the people that threw that?

A. No, sir.

Q. You didn't even see any fellow or shadow raise his arm and throw that, did you?

A. No, sir.

Q. At Farmdale you say something hit the tender?

A. Yes, sir.

Q. How far back is the tender from the engine?

A. Directly in back.

Q. In feet, I mean, to where you would say it struck on the tender.

A. It sounded like it was about three or four feet back.

Q. What it was that hit the tender there you don't know?

A. No, sir.

Q. The object that hit the tender, you don't know whether it was thrown or propelled in some other manner?

A. No, sir.

Q. You didn't see who did it, or what did it?

A. No, sir.

Q. What type of roadbed is there over around Washington, Illinois?

A. Through Washington itself is gravel ballast.

Q. And quite frequently, in traveling over that, 238 particles of that ballast is thrown up and strike the cars and causes a sound?

A. I have never seen any.

Q. You never did?

A. No.

Mr. Knoblock: That's all.

The Court: Is that all?

Q. On this train to Effner, Indiana, you not only had the men carrying guns on the train, you also had a special agent following the train along the hard road, didn't you?

Mr. Heyl: I want to object to the question as assuming the men on the train carried guns.

The Court: I understood him to say they did have guns.

A. Yes, sir, the special agents.

(Question read by reporter.)

Q. In an automobile?

Mr. Heyl: I want to make the further objection it is not shown this man had anything to do with the direction of any man, or the employment of any man.

The Court: I understand that.

Was there an automobile going down the road?

A. I couldn't say.

The Court: Representing the company. You don't know?

A. I don't know.

The Court: What else?

Mr. Knoblock: That's all.

Q. I want to ask you, Mr. Witness, with reference to the incident at East Peoria near the Nickel Plate crossing at the viaduct.

A. Yes, sir.

Q. You stated you saw a man draw his right arm back to throw something?

A. Yes, sir.

Q. Where was that man with reference to the place you observed pickets?

Mr. Knoblock. He later testified he didn't know there were pickets.

The Court: Where he observed men? Where was he with reference to where he observed men?

A. He was out in front of five or six of them, standing out in front.

Q. Where were the five or six and this man with reference to the place where you observed pickets?

A. I observed pickets several times just off on the curb line there.

Q. Is that where these men were?

A. Yes, sir.

Q. On this Fairbury incident you were asked with reference to the position of the other men on the train while you were switching there and discovered this derail.

A. Yes, sir.

Q. Where did you leave the other men?

A. We came down through town, and we left three cuts of five cars each between the streets so we wouldn't block any streets. Two of those men were behind with those cuts.

Q. How far were those brakemen from the place 240 that you were switching at this elevator?

A. I would say the nearest cut was at least a block away.

Q. Who were the trainmen with you at the time of the derail?

A. Armstrong, conductor Armstrong and myself.

Q. Where was he?

A. He was up at the elevator.

Q. Standing at the elevator?

A. Standing at the elevator.

Q. Where did you ride?

A. I stood—I was on the ground between the elevator and the engineer. I was relaying signals.

Q. Did you see Armstrong during the time you were there?

A. Yes, sir.

Q. Did he go out to the derail?

A. No, sir.

Q. Were there any other employees of your train at or near the place where this derail occurred?

A. No, sir.

Mr. Heyl: That's all.

The Court: Is that all?

*Recross Examination by Mr. Knoblock.*

Q. When you say there were no other employees near that derail, you mean as far as you saw?

A. No, sir.

241 *Re-redirect Examination by Mr. Heyl.*

Q. When you returned to the place where you left these other cars, what did you find with reference to the location of the other employees? The brakemen?

A. They were there.

Q. Where you left them?

A. Yes, sir.

Q. That is true of all of them, isn't it?



A. Yes, sir.

Mr. Heyl: That's all.

The Court: We will be at recess for about five minutes.

(Recess.)

EDGAR TUCKER, called on behalf of the plaintiff and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Edgar Tucker.

Q. How old are you?

A. Thirty-two.

Q. Where do you live?

A. 100 Shadowway Drive, East Peoria.

Q. What is your business or occupation?

A. Machinist.

Q. And where are you employed?

242- A. Toledo, Peoria & Western Railroad.

Q. How long have you been employed by this plaintiff?

A. Twelve years.

Q. How long?

A. Twelve years.

Q. Now, were you connected in any way with the train on December 30, 1941, known as extra 43 east?

A. Yes.

Q. Was the witness McKinney who just testified on that train?

A. Yes.

Q. What position did you occupy on the train? What capacity?

A. Fireman.

Q. Fireman?

A. Yes.

Q. Now, what happened on December 30, 1941, at about 6:40 P. M. at or near the Nickel Plate crossing?

A. There were rocks thrown at the engine as we came under the East Peoria viaduct at the Nickel Plate crossing.

Q. Which way were you proceeding?

A. We were going east.

Q. Did you make an observation of the men that were there?

A. That's right.

Q. Where were these men?

A. They were standing—let's see—it would be the north side of the tracks close to the viaduct.

Q. Did you recognize them either by knowing their names or as former employees of the T. P. & W.?

A. I recognized one of them, yes.

Q. Whom did you recognize?

243 A. William Christoff.

Q. William Christoff?

A. Yes.

Q. One of the defendants in this case?

A. Yes.

Q. What did you see him do?

A. He threw a rock or piece of iron.

Q. Did that strike the engine?

A. Yes.

Q. Where?

A. Left side of the cab before the fireman's arm rest.

Q. What was Christoff before?

A. Engineer.

Q. For the T. P. & W.?

A. Yes.

Q. Mr. Christoff, will you please stand up? (Person named rises.) Is that the man you saw throw at the engine?

A. Yes, it is.

Q. Were there any other men with him?

A. Yes.

Q. Did you recognize the other men?

A. No.

Q. Did you recognize them with reference to their former employment?

A. No.

Q. What time was it that you saw Christoff throw at this engine?

A. Well, it was around 6:40, 6:45, as we were coming under.

Q. Did you see him, Christoff, William J. Christoff, at any other time around the same place—

A. No.

244 Q. —as a picket?

A. No.

Mr. Heyl: I think that is all with this witness.

The Court: Cross examine!

*Cross-Examination by Mr. Knoblock.*

Q. You say that your trade is that of a machinist?

A. Yes.

Q. You have been a machinist for twelve years?

A. No.

Q. You worked for the T. P. & W. for twelve years?

A. Yes, sir.

Q. What was your first work there?

A. Laborer.

Q. And you say you live at 100 Shadow Drive?

A. Shadoway.

Q. Shadoway Drive, East Peoria?

A. Yes.

Q. And on this extra 43 east train on December 30, 1941, is that the train that went to Effner, Indiana?

A. No.

Q. Where did that train go to?

A. It went to Hamilton, Illinois, and Keokuk, Iowa.

Q. And did you go down there on that train on the 29th?

A. Yes.

Q. And going out it was extra 43 west, is that right?

A. Yes.

Q. You noticed nothing of any kind or character on the entire trip west?

245 A. We were stoned a little around Sciota, but I didn't see anyone.

Q. Of your own knowledge you know nothing about that?

A. No.

Q. Where was your place on this train?

A. Fireman on the engine.

Q. And then, as you came back on the 30th, do you, of your own knowledge, know of anything unusual that happened until the Nickel Plate crossing?

A. No, I don't know of anything except that.

Q. Where is that place that you claim this took place with reference to the viaduct?

A. It's over the railroads at the Nickel Plate crossing in East Peoria.

Q. Can you describe the Nickel Plate crossing to us more definitely with reference to streets?

A. It's on what is known as East Washington Street in East Peoria, 1100 block, and this viaduct is Route 150 out of East Peoria.

Q. That is the one you cross over when you go to Morton?

A. Yes.

Q. How close was Christoff standing to the train?

A. Oh, I should judge twenty feet.

Q. And it was dark?

A. Rather dark, yes.

Q. Or was it just partially dark? Just getting dark?

A. There is a light there, lights from the street light there under the viaduct.

Q. At 6:45, that was evening that you came back?

A. Yes.

Q. You say there is a street light?

246 A. Yes, there is a light there. I don't know just where it is located, but it was showing on those fellows.

Q. You didn't recognize anyone else as even former employees of this plaintiff?

A. No.

Q. Whom did you talk to about your testimony here prior to coming into the court room? Did you talk to anyone?

A. No, sir.

Q. You haven't discussed this with anyone prior to your coming in here?

A. No.

Q. Your attorneys didn't know what you were going to testify to before you came on the stand?

Mr. Heyl: I object as a conclusion.

The Court: He may answer.

Mr. Heyl: I want—

The Court: Just a minute! What is the question?

(Question read by reporter.)

A. No.

Q. No one knew what your testimony would be prior to your taking that stand?

Mr. Heyl: I object to that.

The Court: Objection sustained to that.

Q. Did you disclose to anyone what your testimony would be prior to your taking this witness stand?

A. I reported to my foreman the circumstances as they are on the day they happened, yes.

Q. Who was your foreman?

A. Mr. Hunter is the man that I reported to.

247 Q. Is he an official of the T. P. & W.?

A. I believe he is a clerk.

Q. Where is he stationed?

A. In East Peoria.

Q. Where does he live?

A. I don't know.

The Court: Do you know where he lives?

A. No, I don't.

Q. Which side of the crossing did you say you saw Christoff standing?

A. North.

Q. The train was proceeding east at the time?

A. Yes.

Q. The fact is, isn't it; the light to which you refer is on the south side of that track?

A. No.

Q. How far is that street light away from the track?

A. I would say it was about the same distance Mr. Christoff was standing.

Q. I prefer that you reduce that to feet.

A. Well, it's hard to guess.

Q. What is your best judgment?

A. I would say twenty feet.

Q. He was standing right under the street light?

A. Not right under the street light; standing to the east of the street light.

Q. How far?

A. About fifteen feet.

Mr. Knoblock: That's all.

The Court: Anything else with this witness?

248 Mr. Heyl: Just one minute, please!

*Redirect Examination by Mr. Heyl.*

Q. Mr. Tucker, did you make an affidavit and furnish it to the plaintiff of the facts that you have testified to in this case?

A. Yes, I made an affidavit when I came in.

Q. When you came in?

A. Off the run, yes.

Q. You haven't talked to Mr. Elliott or myself, have you?

A. No.

Q. But you delivered an affidavit to one of the officers of the company, didn't you?

A. Yes.

Q. That is right, isn't it?

A. Yes.

Mr. Heyl: That's all.

Trial Recessed at 12:15 o'clock P. M.

Trial Resumed at 2 o'clock P. M.

249 EDMUND P. OWEN, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Edmund P. Owen.

Q. Where do you live?

A. Route 2, Washington, Illinois.

Q. What is your age?

A. Twenty-nine.

Q. What is your business or occupation?

A. Blacksmith.

Q. And where are you employed?

A. Toledo, Peoria & Western Railroad.

Q. How long have you been employed there?

A. Over eight years.

Mr. Heyl: A little louder, please.

A. Over eight years.

Q. On December 29, 1941, were you on extra 43 east?

A. I believe not. It was west.

Q. Is that the correct date?

A. December 29? I believe it is.

Q. On extra 43 east, is that the train—

Mr. Knoblock: I object as having been asked and answered.

The Court: What train were you on December 29th? East or west?

A. On the 29th I believe I was on an extra west.



250 Q. In what capacity were you serving on that train?

A. As a brakeman.

Q. Where were you riding?

A. In caboose R at the rear of the train.

Q. And do you know what happened near the Nickel Plate crossing?

A. Stones were thrown at the caboose.

Q. Do you know who threw the stones?

A. No, not there; I believe not.

Q. What's that?

A. Not at that time; I believe not.

Q. Where were the men that you saw throwing stones?

A. At the Persimmon Street crossing.

Q. That was a later time?

A. That was at a later time.

Q. The train was traveling in which direction?

A. Westward.

Q. East or west?

A. Westward.

Q. What time did you reach the Persimmon Street crossing?

A. Approximately 10 o'clock.

Q. In the morning?

A. A. M.

Q. Will you tell what occurred there?

A. Rocks and stones hit the caboose, and one window was broken out.

Q. Did you see the persons who threw the stones?

A. I saw three men.

Q. Where were they?

A. They were standing on the—by the side of the right-of-way.

Q. And do you know their names?

251 A. I recognized one as Mr. Gimming.

Q. John J. Gimming?

A. That's right; and I recognized another one as Mr. Garland Brown.

Q. Garland F. Brown?

A. Garland F. Brown; and another one as Mr. William Brown.

Q. Are these men in the room? Mr. Gimming and Mr. Brown? (Persons named rise.) Are those the men?

A. Yes, sir.

Q. Which is Mr. Gimming?

A. The largest one.

Q. Back at the rear?

A. That's right.

Q. Which is Garland F. Brown?

A. The one in front.

Q. And the other one is William L. Brown?

A. That's right.

Q. Where were they with reference to the train when these stones were thrown?

A. You mean the location where the men were? Well, approximately twenty feet on the right side of the train as we were going west.

Q. And did they say anything to you?

A. I never heard anything, no, sir.

Q. Did they do anything further than throw stones?

A. Not at that point.

Q. Did they later?

A. In several places.

Q. Where did you next see these men?

A. Underneath or at the crossing close to the Cedar Street viaduct some more windows were broken out of the caboose there.

252 Q. Will you give the names of the men that you saw there?

A. Those same men.

Q. Anyone else?

A. No, I believe not.

Q. Now, when was the next time that you had some trouble?

A. At the telephone booth at Hollis, as the caboose went by there the same men threw at us again.

Q. On that morning did you see William J. Christoff and Gerald A. Brown?

A. I saw them around the railroad, but I never saw them throw.

Mr. Knöblock: Who are those men?

Mr. Heyl: Gerald A. Brown and William J. Christoff.

Q. Where did you see these men?

A. I saw them at Hollis, and then I saw Mr. Underwood in his car as he was driving alongside the train.

Q. Where?

A. Just the other side of Hollis.

Q. Where was Mr. Christoff?

A. Mr. Christoff was at Hollis.

Q. What was he doing?

A. At the time the caboose went by, he was just standing there.

Q. Was anyone with Underwood in his car?

A. I didn't recognize anyone.

Q. Were there some other people in the car?

A. Yes.

Q. What did they throw at you or at the train at Hollis near the telephone booth?

A. Well, there was several bricks came in the caboose, and one large rock.

Q. About how large was the rock?

253 A. As large as your fist, or a little larger.

Q. The bricks?

A. Half bricks.

Q. How many of them came in the caboose?

A. I had fourteen at the end of the trip.

Q. Where did you gather up the fourteen?

A. At different times along the line.

Q. From the time you left Peoria?

A. Until Canton.

Q. Until you got to Canton?

A. Yes.

Q. Were there other bricks or stones thrown at the train other than you found in the train?

A. They hit the car and fell back on the ground, yes, sir.

Q. Now, were there some other men with the men that you have identified and named at these various places?

A. I couldn't say.

Q. Did you see any other men with them?

A. Well, no, I wouldn't say.

Q. Did you see William L. Brown that day?

A. William L. Brown that day?

Q. Yes.

A. Yes, he was throwing bricks at me.

Q. Was he— How do you identify him? Did you know him from before?

A. Oh, yes, sir. Yes, sir.

Q. What about the method of his travel along the road? Did you see him traveling?

A. Yes, he was in an automobile that I had saw him  
254 drive before, and he drove along the highway by the side of the railroad tracks.

Q. At what point?

A. Well, between— The other side of Hollis.

Q. Anyone with him?

A. Yes, there were some other men in the car.

Q. Do you know who they were?

A. No, I couldn't say.

Q. Were you close enough to identify them?

A. No, not at that time.

Q. How was Gerald L. Underwood traveling?

A. He was in a car that I have saw him drive before.

Q. Do you remember the kind of a car it was?

A. Almost a new Pontiac?

Q. Do you remember the color of it?

A. I believe it's red.

Q. Is that the car that he used for some time in driving to and from work?

A. Yes, sir.

Q. Now, will you tell me who was the engineer on that train?

A. Who the engineer was? It was Mr. Ward.

Q. Larry C. Ward?

A. That's right.

Q. Who was the conductor?

A. Mr. Clarence Carnarius.

Q. And Clif Harvey and Bert Taylor were also on there?

A. That's right.

Q. Now, what damage, if any, resulted to this caboose by the throwing of these rocks?

255 A. Most of the windows were broken, and the window sash was broken. That's about all.

Q. How about the locomotive? Did you observe any stones being thrown at the locomotive?

A. No.

Mr. Heyl: I can't hear you.

A. No, sir.

Q. How many cars were on that train?

A. I believe we had twelve.

Q. Now, after you passed the telephone booth at Hollis, you continued west to Canton, did you not?

A. That's right.

Q. What happened about half a mile west of the Hollis telephone booth?

A. At a hard road crossing there were some more stones and bricks thrown in and at the caboose, and another

window was broken on the left hand side of the caboose there.

Q. Is that the road that you cross that leads to Pekin across the dike, or is it below that?

A. It goes to Pekin, I believe.

Q. That is the one you are speaking of now?

A. Yes.

Q. Where is the telephone booth?

A. About half a mile toward Peoria from there.

Q. This Pekin road?

A. That's right.

Q. Do you know where the Wheeler crossing is?

A. Yes.

Q. Where is that with reference to the Mapleton water tank?

256 A. It's about a quarter of a mile eastward.

Q. And what happened at the Wheeler crossing?

A. Some more bricks and stones were thrown at the caboose.

Q. By these same men?

A. Well, I didn't see the men there at that crossing.

Q. You weren't able to identify them?

A. That's right.

Q. How about Glasford, Illinois? What happened there?

A. At Glasford there were some rocks and bricks thrown at the caboose by these same men.

Q. Did you see these men there?

A. Yes.

Q. Will you tell the court the names of the men that you recognized as being the ones that were throwing at the train while it was at Glasford?

A. I recognized Mr. Gimming and Mr. William Brown and Mr. Garland Brown.

Q. Now, did you see William L. Brown as you approached the station platform at Glasford?

A. Yes.

Q. Were the others with him?

A. They were farther back at the end of the platform.

Q. What did you do there at the station?

A. I got out on the rear platform of the caboose to pick up some orders.

Q. Was the train moving or stopped?

A. It was moving.

Q. Was there someone out there to hand it to you?

A. The operator.

257 Q. The station operator?

A. Yes, sir.

Q. What happened as he tried to hand you that order?

A. William Brown threw a rock at me.

Q. That is William L. Brown?

A. That's right.

Mr. Heyl: Will you stand up, Mr. Brown?

(Person named rises.)

Q. Is that the gentleman who threw the rock at you while you were trying to get the order?

A. That's right.

Q. What did you do?

A. I ducked.

Q. Then what did you do?

A. Then I reached out and took the orders.

Q. Then what?

A. Then I dashed back into the caboose.

Q. What happened after you got in the caboose?

A. A rock hit the door.

Q. Did you see William Brown at the rear of the train?

A. After it had passed? Yes, sir.

Q. Was the other Mr. Brown there?

A. The other Mr. Brown and Mr. Gimming.

Q. Where were they with reference to William L. Brown?

A. About twenty feet west.

Q. These two men you have just identified as being the ones that responded to their names and stood up in the court room, they were former employees of this railroad, were they?

A. That's right.

258 Q. Now, what happened when you arrived at Canton?

A. Just before we crossed the C. B. & Q. railroad tracks, some more bricks and stones were thrown in and against the caboose.

Q. What happened to the caboose? Any damage to the caboose?

A. I believe most of the windows were already broken.

Q. How about the lower window glass on the right side? Was that broken there or at Hollis?

A. Both places I believe they were broken.



Q. Did you see the men at Canton, these same men? These three you have identified?

A. Yes, sir.

Q. Were there any others there?

A. I didn't recognize anyone else.

Q. When you arrived at Canton, were those three men there by the station or at the C. B. & Q. crossing.

A. That's right.

Q. What did they do?

A. They threw the bricks at the caboose, and stones.

Q. Did you see where they were obtaining the bricks and stones they were throwing at this train?

A. No.

Q. Do you know how they traveled from Glasford to Canton? Did you see any automobiles at Canton?

A. No, sir.

Q. You saw them as you arrived there?

A. As we went by there.

Q. Did you stop at Canton?

A. No, sir.

Q. They threw at the train as it was passing?

259 A. Went by, yes.

Q. Now, when you returned—You went to Hamilton with that train, didn't you?

A. That's right.

Q. And returned the same day, or the following day?

A. The following day.

Q. Now, in this train that you have described were there any cars that you took into Keokuk, Iowa?

A. Yes, sir.

Q. How many, if you recall?

A. I believe there were two.

Q. That you took from Peoria into Keokuk?

A. That's right.

Q. When you came out the next morning, did you return some cars?

A. From Keokuk? Yes, sir.

Q. Do you remember what they were?

A. No. There were several; about seven, I believe.

Q. They were taken from Keokuk, Iowa, into Illinois, on this railroad, were they not?

A. That's right.

Q. Did anything happen on the way into Peoria from Hamilton?

A. Not until we got into Peoria.

Q. And at what point?

A. At the Persimmon Street crossing.

Q. What time, about, did you arrive there?

A. About 5:15, 5:20.

Q. And did your train stop there?

A. Yes, sir.

Q. What happened?

260 A. Just as the train started, there was quite a bombardment of bricks and stones that hit the caboose and hit some window glass, and then as we started the lights went out of the caboose, and that is all that happened there.

Q. Do you know what caused the lights to go out?

A. The wind blew through the caboose when they were broken out again.

Q. Did they break out the rest of the windows in the caboose at that time?

A. Not the rest of them. There was two that wasn't broken when we arrived in the yard.

Q. The rest were all broken?

A. Yes, sir.

Q. How many lights are there?

A. There are six lower ones and eight in the cupola, and there was two in the cupola that wasn't broken and two lower ones that wasn't broken.

Q. The rest were all broken out?

A. That's right.

Q. Did you identify the men or recognize the men that threw the stones there?

A. No, sir.

Q. What was the next thing that happened?

A. It was at the Franklin Street crossing. Some more stones were thrown.

Q. That is the old Chestnut crossing?

A. At the end of the river bridge.

Q. At the Union Depot?

A. Across the river on the East Peoria side.

261 Q. What happened there?

A. Some more stones were thrown at the caboose.

Q. And did anything happen to the caboose?

A. Well, no, sir, I don't believe so.

Q. Then what happened later?

A. Then as we went underneath the viaduct at the

Nickel Plate crossing some more stones were thrown at the caboose.

Q. Where did they come from, if you know?

A. No, I couldn't say. They just hit the side of the caboose.

Q. You didn't see any person?

A. No, it was dark.

Q. What time did you arrive at the yards?

A. I believe it was 5:45, or near that.

Q. Did you have some of the cars that you took at Keokuk in that train?

A. Yes, sir.

Q. Did you go out on the next day on that same train?

A. No, sir.

Q. In either direction?

A. No, sir.

Q. When was the last time you saw William J. Christoff that day? The day you went out, or the day you came back? When did you see him last?

A. The day I went out.

Q. And where was he?

A. At Hollis.

Q. That was the last time?

A. I believe it was, yes, sir.

Q. Was he with Gimming, Brown, Garland F. 262 Brown, and William L. Brown?

A. Well, he was a few feet from them.

Q. Where did you see Gerald L. Underwood that day?

A. He was there where Mr. Christoff was.

Q. The same time?

A. The same time.

Q. Did you see Herman Reiman?

A. I don't believe so.

Q. Did you see John Feuger?

A. No, I don't believe so.

Q. This Gerald L. Underwood and Christoff were both former employees of the company, are they?

A. Yes, sir.

Q. And defendants in this case?

A. I believe so.

Mr. Heyl: Is Mr. Christoff in the room, please?  
(Person named rises.)

Q. Is that the gentleman?

A. Mr. Christoff, yes.

Q. Underwood? Gerald L. Underwood?

A. Yes, sir.

Mr. Heyl: I think he has been up several times.

Cross-examine!

*Cross-Examination by Mr. Knoblock.*

Q. You say you are twenty-nine years of age, Owen?

A. That's right.

Q. And live at Washington?

A. Yes, sir.

263 Note: The skip in numbering from page 163 to 170 is merely typographical, and there are no missing pages.

263a. Q. And you are a blacksmith?

A. Yes, sir.

Q. You were a blacksmith for eight years at the T. P. & W.?

A. No, sir.

Q. How long have you been a blacksmith at the T. P. & W.?

A. About a year.

Q. And what were you before that?

A. Car inspector.

Q. What were you before that?

A. Repair track foreman.

Q. And before that what were you?

A. Car repair.

Q. And what was your first work at the T. P. & W.?

A. Laborer.

Q. Had you ever been a brakeman on a train before December 29, 1941?

A. No, sir.

Q. And you went out that day as a brakeman?

A. Yes, sir.

Q. You didn't even go out that day as a student brakeman, is that right?

A. That's right.

Q. How many trips had you made prior to going out as a brakeman on that date?

A. None.

Q. None? Is that right?

A. Yes, sir.

Q. How many have you made since that date?

A. One.

Q. Where did you go on that occasion?

263b A. That same train.

Q. Where?

A. To Keokuk.

Q. Keokuk, Iowa? What type of work are you doing now?

A. Blacksmith.

Q. You are back as a blacksmith now?

A. Yes, sir.

Q. On this trip you are telling about on the 29th of December, 1941, you rode in the caboose on that—on the rear of the train, is that right?

A. That's right.

Q. Now, this train that you went on west December 29, how all did you say was on that train?

A. As employees, you mean?

Q. I would say who was on there.

A. There was Mr. Clarence Carnarius, Mr. L. C. Ward,—

Q. What was Carnarius doing on the train that day?

A. Conductor.

Q. Where was Larry C. Ward?

A. He was an engineer.

Q. All right! What was Cliff Harvey doing on that train?

A. Brakeman.

Q. Bert Taylor, what was he doing?

A. Fireman.

Q. A fireman? Now, who else was on the train?

A. That's all, I believe.

Q. Wasn't there some special agents on that train?

A. Yes, that's right.

Q. And what were their names?

264 A. I believe one of them was James.

Q. James? That was his last name?

A. That's right.

Q. Do you know what his first name was?

A. No, sir.

Q. Where was he from?

A. I don't know.

Q. He carried a gun, didn't he?

A. I believe he did.

Q. Do you know what calibre?

A. No, sir.

Q. It was loaded?

A. I don't know.

Mr. Heyl: I object unless he saw a gun.

The Court: He said he saw the gun.

Mr. Heyl: Not cross-examination.

The Court: He said—

Q. How many special agents rode in the caboose?

A. One.

Q. That was this man James?

A. That's right.

Q. How many other special agents were on this train?

A. One.

Q. Where did he ride?

A. In the engine.

Q. What was his name?

A. I believe it was Kane.

Q. King?

A. Kane.

265 Q. Where is he from?

A. I do not know.

Q. He carried a gun, too, didn't he?

A. I don't know.

Q. You don't know that?

A. No, sir.

Q. How many guns did James carry?

A. I just saw one.

Q. And did he go all the way over to Hamilton with you?

A. Yes, sir.

Q. Went over to Keokuk with you?

A. Yes, sir.

Q. Both those special agents did?

A. Yes, sir.

Q. And they came back with you?

A. Yes, sir.

Q. Did you at any time cause a warrant for the arrest of William L. Brown for throwing a rock at Glasford to be issued?

A. I beg your pardon! I didn't understand the question.

Q. Did you ever swear out a warrant for William L. Brown for throwing a rock at you at Glasford?

Mr. Heyl: I object. It is immaterial.

Mr. Knoblock: It is competent under the Norris-  
10 Guardia Act.



The Court: I don't think it would be material, but he may answer and get all the record we have. Did you swear a warrant out?

A. No, sir.

Q. Did you cause any warrants to be sworn out for Gimming?

266 A. No, sir.

Q. For Garland Brown?

A. No, sir.

The Court: I think we can save a lot of time. Did you swear out any warrants for anybody?

A. No, sir.

Q. On December 29, 1941, as you started out, you mentioned something about the Nickel Plate crossing. Was there anything that happened at the Nickel Plate crossing as you went out of Peoria?

A. Yes, sir.

Q. Who did you see there?

A. I didn't recognize anyone.

Q. I see. And whatever was done there, you don't know by whom it was done?

A. No, sir.

Q. And you wouldn't know whether it was done by any of the employees of the T. P. & W. or not, is that right?

A. Yes, sir.

Q. Now, what time did you leave the yards that day?

A. I believe it was 9:30, or approximating 9:30.

Q. What time? Morning or afternoon?

A. Morning.

Q. What time did you arrive at the Persimmon Street crossing?

A. Well, about 10 o'clock in the morning.

Q. And there you say you saw some men standing on the right side? On the side of the right-of-way, is that right?

A. That's right.

Q. About twenty feet from the side of the train?

A. Approximately.

267 Q. And those men, three of those men you saw, were John Gimming, Garland F. Brown and William Brown?

A. Yes, sir.

Q. And they said nothing to you on that occasion?

A. I heard nothing.

Q. You say they threw rocks, and you saw them do it?

A. Yes, sir.

Q. What did the special agents do when they did that?

A. Nothing.

Q. He stayed in the caboose?

A. Yes, sir.

Q. Then you say there is another crossing that is close to the Cedar Street viaduct, is that right?

A. That's right.

Q. You say those same three men threw rocks?

A. Yes, sir.

Q. You saw them do that?

A. Yes.

Q. Was the special agent in the caboose when they did that?

A. Yes.

Q. What did he do?

A. Nothing.

Q. Did he stay in the caboose?

A. Yes.

Q. Was there any other man present on those occasions?

A. I never noticed anyone.

Q. Those are the only three you saw?

A. That's right.

Q. Who else was riding with you in the caboose except the special agent?

268 A. There was at that time, I believe, the conductor.

Q. What was his name again?

A. Mr. Carnarius.

Q. Anybody else besides you, the special agent and Mr. Carnarius?

A. I believe that's all.

Q. Now, then, you mentioned about the telephone booth at Hollis, and who do you say threw rocks on that occasion?

A. The same man.

Q. That is Gimming, Garland F. Brown and William Brown, is that right?

A. Yes.

Q. Anybody else?

A. I never saw anyone else.

Q. Throw, you mean?

A. Yes.

Q. Or didn't recognize anybody else there?

A. I didn't recognize anybody else there.

Q. At the telephone booth at Hollis, you never saw anybody else there at all but Gimming, Garland F. Brown and William Brown?

A. That's right.

Q. Didn't I understand you to say on direct examination you saw Christoff and Underwood there?

A. At the telephone booth at Hollis? That's right.

Q. Didn't you say there wasn't anybody else there?

Mr. Heyl: I object.

A. I thought you meant throwed at me.

Q. I asked you that specifically.

A. I beg your pardon!

Q. Was the special agent there in the caboose with you at the time?

269 A. Yes.

Q. What did he do?

A. Nothing.

Q. And you don't know what went on at the front-end of the train, do you?

A. No, sir.

Q. Now, then, you say again when— What time did you get to Hollis?

A. About 10:45, I believe.

Q. In the morning?

A. Yes, sir.

Q. And did you stop there?

A. The train stopped there, yes, sir.

Q. About how long?

A. About five minutes, or something like that.

Q. And when you say you went across the hard road about a mile west of Hollis? Is that right?

A. About half a mile.

Q. Isn't that what I said? Half a mile?

Mr. Elliott: You said a mile.

Q. Half a mile west of the Hollis station you crossed the hard road?

A. That's right.

Q. You say more rocks were thrown?

A. Yes, sir.

Q. Who threw them?

A. I don't believe I saw that.

Q. You don't know who threw those?

A. No, sir.

270 Q. In fact, you didn't see anybody there?

A. That's right.

Q. What did the special agent do on that occasion?

A. Nothing.

Q. Then at the Wheeler crossing near Mapleton, what time did you arrive there?

A. Approximately 11 o'clock, or somewhere in there.

Q. That is in the morning?

A. In the morning, yes, sir.

Q. And you didn't see any of the men throwing there?

A. No, sir.

Q. You didn't see any men around there at all, is that right?

A. Yes, I saw a glimpse of somebody as we went by, but I couldn't say who it was.

Q. I see. Now, at Glasford you say there you saw Gimming, William Brown and Garland Brown?

A. Yes, sir.

Q. And the only one that threw at you there was William L. Brown?

A. Yes, sir.

Q. And was the special agent in the caboose at that time?

A. Yes, sir.

Q. What did he do, if anything?

A. Nothing.

Q. You weren't hit, were you?

A. No, sir.

Q. There were no verbal threats made to you at any time, were there?

A. No, sir.

Q. At Canton you didn't see any men around there at all, did you?

271 A. Yes, sir.

Q. Who?

A. Mr. Gimming, Mr. Brown and Mr. Brown.

Q. Mr. who?

A. Gimming, Brown and Brown.

Q. Did you see them throw there?

A. Yes, sir.

Q. Was the special agent with you on that occasion?

A. Yes, sir.

Q. What did he do, if anything?

A. Nothing.

Q. Now, on your return to Peoria the next day from Hamilton, you say nothing happened until you got to the Persimmon Street crossing in Peoria; is that right?

A. Yes, sir.

Q. At about 5:15 in the evening?

A. I believe so.

Q. It was dark, was it?

A. Yes, sir.

Q. You didn't see anyone throwing there?

A. No, sir.

Q. And no threats were made on that occasion?

A. No, sir.

Q. Then at the Franklin Street crossing here in Peoria, is that right?

A. At the other end of the Franklin Street bridge in East Peoria.

Q. On the Tazewell County side, is that right?

A. Yes, sir.

Q. You didn't see anybody throw anything there?

A. No, sir.

272 Q. At the Nickel Plate crossing at the viaduct, that was about when? About what time of the evening?

A. About fifteen or twenty minutes later.

Q. You didn't see anybody throw anything there?

A. No, sir.

Q. Did you make any report to your superiors who threw these rocks at you?

A. Yes, sir.

Q. You made the report that night or the next day?

A. That night.

Q. Whom did you report it to?

A. To ~~I~~ reported it to I believe the trainmaster's clerk. I do not know. He was working in the trainmaster's office, Mr. Carroll Payne.

Q. Carroll Payne?

A. Yes, sir.

Q. And did you ever go on this train toward the east?

A. No, sir.

Q. At no times did you see any of these men you have named here carry any guns, did you?

A. No, sir.

Q. You never saw them carrying any clubs, either, did you?

A. No, sir.

Q. You never saw anything unusual as you passed through Sciota that night going west, did you?

A. No, sir.

\* Q. Were you offered any bonus of \$10.00 a day by the plaintiff here in this work?

A. Yes, sir.

273 Q. You have seen?

A. Yes, sir.

Q. And did you get paid?

A. Well, not yet, no, sir.

Q. It has been promised to you?

A. That's right.

Q. And was it promised to you both the days that you went over to Hamilton and came back?

A. No.

Q. Who made that promise to you?

A. The superintendent, Mr. Best.

Mr. Knoblock: That's all.

*Redirect Examination by Mr. Heyl.*

Q. This train that you have been speaking of, was that on December 31?

A. Yes, sir.

Q. The day before New Year's?

A. Yes, sir.

Q. That is the date you are discussing in this train west?

A. Yes, sir.

The Court: Is that all, gentlemen?

Mr. Heyl: That's all.

The Court: Is that all?

274 CLARENCE L. CARNARIUS, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Clarence L. Carnarius.

Q. And where do you live, Mr. Carnarius?

A. At 228 Gilbert Street, Peoria.

Q. What is your age?

A. Forty-five.

Q. What is your business or occupation?

A. I am a lead car inspector.

Q. How long have you been employed by the T. P. & W.?



A. About fourteen years.

Q. In what various departments?

A. Well, I started there as a chief clerk to the master mechanic, and then I was general car foreman, trainmaster, and now I am lead car inspector.

Q. Is that your present occupation?

A. Yes, sir.

Q. Were you on the train number 43, extra east, on December 30, 1941?

A. Yes, sir.

Q. And how far did you travel with that train?

A. From Hamilton to Peoria.

Q. Hamilton, Illinois, to Peoria,—

A. Uh-huh.

Q. —is that right?

A. Yes, sir.

275 Q. Do you recall what happened at or near the Nickel Plate crossing on the west end of the Peoria yard as that train was either coming or going into the yards?

A. That was there near the viaduct. There were some men, former employees, strikers I would call them. One of them threw a rock or a brick at the cab.

Q. At what?

A. At the engine cab.

Q. Where were you?

A. I was in the engine cab.

Q. And which side of the engine did he hit?

A. He hit the left side.

Q. That is the fireman's side?

A. Yes, sir.

Q. What was the size of the article that you observed? If you know what it was, state.

A. Well, I couldn't say the size of that particular one. I don't recall the size of it.

Q. Do you know what article it was?

A. It was just a brick is all I could say about it.

Q. Did you see the man that threw the brick?

A. No, I didn't see the man.

Q. Now, which way was the train moving when that occurred?

A. The train was moving east.

Q. On the return trip?

A. On the return trip to Peoria yard.

Q. That was on what day?

A. On December 30.

Q. December 30?

A. Yes, sir.

276 Q. On December 31, 1941, did you act as a conductor on an extra train west?

A. I did.

Q. What time did you leave Peoria?

A. About 9:57.

Q. In the morning?

A. In the morning.

Q. How far did you go?

A. We went to Hamilton.

Q. From East Peoria?

A. We went to Hamilton, Illinois.

Q. From East Peoria, Illinois?

A. From East Peoria, yes, sir.

Q. And then you returned, did you, from Hamilton, Illinois, to Peoria? East Peoria?

A. On the following day.

Q. That was on January 1,—

A. January 1,

Q. —1942?

A. Yes, sir.

Q. Now, will you identify that train by the name of the engineer and the conductor? You were the conductor, weren't you?

A. Yes.

Q. The engineer?

A. The engineer was L. C. Ward.

Q. That is Larry Ward?

A. Larry Ward, yes, sir.

Q. Now, at Swords' Siding, East Peoria, did anything happen there?

A. Yes. There were some of the strikers threw  
277 quite a number of bricks at the engine cab. I was on the cab. We were waiting there for the bridge signal.

Q. Did anything happen to that train after you left the yards, and before you reached Swords' Siding?

A. There were rocks thrown at us at the Nickel Plate crossing there.

Q. Any of them get into the cab?

A. Yes, sir.

Q. What happened? Any windows broken?

A. A number of them broke the windows and did other damage, window frames.

Q. Were you in the caboose at any time on that train?

A. On that trip? I dropped off of the engine over in town just along the depot and let the train pull by me to make sure that we weren't having any trouble with the train, and I got on the caboose as it came by.

Q. That is while it passed the Union Station?

A. That is when it passed the Union Station.

Q. When did you get back on the engine?

A. I believe it was at the M. & St. L.—what we call “Iowa Junction”.

Q. That is south of Peoria?

A. That's right.

Q. What happened after you left the station? I mean the Union Station.

A. Rocks were again thrown at us at the Cedar Street bridge.

Q. You left the station or the yards, I believe you said, at 9:30 that morning.

A. We were called for 9:30. We left at 9:57.

Q. The first place that you observed any throwing 278 of rocks was at the viaduct at the west end of the Peoria yards, was it not?

A. Yes, sir.

Q. And then the next place was East Washington Street, East Peoria?

A. What we call Swords' Siding?

Q. Is that the Swords' Siding?

A. The next place I recall of right now was at Swords' Siding, although there were times on this particular trip that I made notation of the time when it happened when we were particularly hard—when we received a large number of rocks or bricks.

Q. East Washington Street is in East Peoria, is it not?

A. Yes, sir.

Q. And that is near the crossing?

A. That's near what we call “P. & P. U. Junction”.

Q. What happened there?

A. I don't recall just now.

Q. Then West Washington in East Peoria would be at Swords' Siding?

A. We call it “Swords' Siding”. That is where we stopped for the signal.

Q. What happened at Persimmon Street? What happened further at the Swords' Siding that you haven't told us?

A. The next place I recall of at the present time is Cedar Street bridge.

Q. Let's get Swords' Siding first.

Mr. Knoblock: I submit he has gone over that. I object to the leading of the witness.

The Court: If you have anything to state in regard to that you haven't stated, state it.

Q. At the Swords' Siding?

A. Yes.

279 Q. Who were they?

A. Particularly there I noticed William Brown and Reiman. Those were the particular ones I noticed there that I recall. Further on—

Q. Let's stay at Swords'. William L. Brown and Herman Reiman?

A. Yes, sir.

Q. Are those the only two you recall now?

A. There were a number of others, but the bricks were flying so fast it was pretty hard, really, to say what was going on.

Q. Did you see these two men throw any bricks?

A. I did.

Mr. Heyl: Will Mr. William Brown and Reiman stand up?

Mr. Knoblock: I object. I think he should pick them out of the crowd. Let's see if he can identify them.

The Court: Do you know those men?

A. Yes, sir.

The Court: You say they were the men that were there?

A. Yes, sir.

The Court: I don't see any necessity of identifying anybody. We are just wasting a lot of time.

Mr. Heyl: They are defendants in this case.

The Court: If you know them and say they are the ones, that makes the issue.

Q. Were there others there?

A. There were others there, but as I say, I can't recall identifying them at that particular time.

Q. Were the others you observed—Did you identify them as former employees?

280 A. Yes. I believe I can safely say that they were all. I didn't see any strangers there at that particular time.

Q. How many men were there?

A. I would say right at that particular time all I saw was about five or six men at that particular point.

Q. Did they have anything in their hands except stones or bricks?

A. I don't recall seeing anything else but that.

Mr. Knoblock: I object. That is very leading.

The Court: Yes, objection sustained.

Q. Did you see them have anything in their hands?

A. Only the bricks.

Q. How many of them had bricks?

A. As many as I saw, which were probably about five or six men.

Q. How long was the train standing there?

A. Oh, a matter of probably three minutes.

Q. Until you got the signal for the bridge?

A. Yes.

Q. Then you crossed the bridge and you took the caboose, then, from the station to the M. & St. L. crossing?

A. Yes, sir.

Q. Was there anyone around the station when the train went through there?

A. I didn't see anyone at that particular time.

Q. How about the Cedar Street bridge? What happened there?

A. There were rocks thrown at us there, but I didn't see who threw them.

Q. The next point, then, was at Hollis?

A. Yes, sir.

Q. And now where did you stop at Hollis?

281 A. We stopped at a small building there, telephone booth or shanty, whichever you want to call it, to report to the P. T. dispatcher that we were clearing the P. T. track.

Q. That is the Peoria Terminal?

A. That is the Peoria Terminal.

Q. Where is the dispatcher located?

A. The dispatcher is located in Peoria.

Q. You phoned back to him, is that the idea?

A. That's right.

Q. What happened at that point?

A. Well, as we stopped I got off. The moment we stopped, the bricks started coming in. I got off of the engine to go over to the shanty and called the dispatcher and told him that we were clearing their track. I went back out, got back up on the engine cab, in the engine cab, and the

bricks were still coming, but I did look through the window long enough between flying bricks to recognize at that time Jerry Underwood, John Gimming, Garland Brown, William Brown, William Christoff and also Reiman?

Q. Herman Reiman?

A. Yes, sir, Herman Reiman.

Q. Where were they?

A. They were standing just opposite to the cab behind some cars which were located just on the next track over there; in between the car opening, I might say.

Q. What were they doing?

A. They were throwing bricks at the engine.

Q. Did you notice where they were obtaining these bricks?

A. No, they seem to each have a good supply. When 282 one man let go of his supply, the next man would step up, and they just kept them coming.

Q. Was anyone injured as a result of the throwing of bricks at that point?

A. I guess I was the only one that was hit right at that particular time.

Q. Where were you hit?

A. By— There was a glancing blow. The brick hit the bolt over the fire door in the engine, and flew back and hit me in the mouth.

Q. All right. Did anything else happen there?

A. Well, of course, I got back on the engine. I told the engineer, "All right, let's go", but the bricks were flying so hard that he couldn't get hold of the brake valve right at that particular time when—with the bricks flying there. He watched his opportunity, and he finally did get the brakes released and got started, but we were delayed there probably three or four minutes longer than what we should.

Q. Where were the bricks coming from?

A. Most of them were— From these men that were throwing them, the striking employees.

Q. Were they going into the cab?

A. Most of them were coming into the cab. They were taking particular aim, and when I would stick my head out to look they would seem to aim right at my head.

Q. Pretty good shots?

A. You bet you!

Mr. Knoblock: I object.



Q. The engineer's position in operating the locomotive was in front of that window on his seat?

A. That was his position, yes, sir.

Q. Finally you got the engine started and proceeded westerly? What happened at the Wheeler crossing, if anything?

A. Well, were rocked again there. I didn't see who the men were at that particular point, and—but one of the bricks came through a window of the cab and hit the engineer in the right side, sort of in the hip and diaphragm, I would say. It hit him with such force that he seemed to become—it seemed as though he was losing consciousness. His head lolled over and he started to fall in between the cab and the boiler. Ernie Lawson, the roadmaster, was closest to him. He grabbed him and held him up until the engineer could again regain his senses.

Q. While that was going on, was the engine running without anyone driving it?

A. Yes, sir.

Q. And where was this engineer when he was hit?

A. Beg your pardon?

Q. Where was the engineer when he received this blow?

A. He was just sitting on the front edge of the engineer's seat box, sort of half sitting and half in a standing position there.

Q. Let's go back to the telephone booth at the Peoria Terminal point. I will ask you if you observed any automobile near where these men were throwing bricks.

A. No, I did not.

Q. Is that near the road?

A. The road is up high there, and I didn't have an opportunity to see anything like that.

284 Q. Did you observe an automobile near the Wheeler crossing?

A. Not right at the crossing, but I did observe an automobile at several different points along the road, the hard road.

Q. Was that the same automobile that you observed each time?

A. Yes, it was.

Q. Do you know whose automobile it was?

A. While I was unable to get the license number, it looked very much to me like Jerry Underwood's car.

Q. You had seen that before?

A. I had seen his car before.

Q. From Hollis the road parallel the T. P. & W., does it not?

A. In some places, yes.

Q. And you cross the road at Wheeler crossing?

A. Yes.

Q. This road then proceeds on to Canton,—

A. Yes, sir.

Q. —is that right?

A. Yes, sir.

Q. About how many men did you see along this right-of-way at these various points on the day that you are now discussing, in addition to the men that you have identified?

A. Well, while I did not count them, it seemed to me that there must have been in the neighborhood of twelve men, possibly as many as fifteen.

Q. And where did you see them next after Hollis?

A. I saw them in their automobile at several different points. There were two—

Q. The same automobile?

A. There was another car there which apparently 285 was used, although I couldn't recognize this car.

Q. But you saw this one you believed to be Underwood's car—

A. Yes, sir.

Q. —at several points? Is that what you mean?

A. Yes, sir.

Q. How many points west of Hollis did you see that car?

A. Well, that's pretty hard to say, but I would— As near as I can say now, I must have seen it at possibly five or six points.

Q. What was the last point west?

A. It was getting pretty close to Canton.

Q. When you saw them at the last time?

A. Yes, sir, somewhere over near there. I don't recall exactly where it was.

Q. Now, on the way home (I mean from Hamilton this way east) the next day, did anything happen after you reached Peoria? Before you reached the Peoria yard?

A. Nothing until we got to about Persimmon Street. Persimmon Street, I think, is where it was. That is the first place where some rocks were thrown at us, and then

there were some rocks thrown at us two or three points after we got over the bridge.

Q. On the way west the day before, the day you went out on this train, at the C. B. & Q. crossing at Canton did anything happen there? I don't believe I asked you about that.

A. Well, going through Canton it seemed that there was someone behind every building.

Mr. Knoblock: I object to that.

The Court: Yes, objection sustained.

State what happened, if anything.

A. Going through Canton we were rocked pretty severely. I mean these striking employees threw rocks 286 at us at several points going through Canton.

Q. Did you see the men?

A. No, I didn't see them because they were coming from behind buildings. I say they were striking employees because I imagine they were the same men that threw rocks at us all the way through.

Mr. Knoblock: I object to that. He said he "imagines".

The Court: It may stand. We will let it all stand except the imagination part.

Mr. Heyl: I don't care for that part.

Q. Did anything happen west of Canton?

A. No, sir.

Q. Do you know the names of the men that threw the brick that hit Ward?

A. No, I don't.

Q. Now, on that trip west and also on the trip east from Hamilton, did you or not have interstate cars in the train going beyond Illinois, and coming from Iowa into Illinois?

A. I just don't recall that right now.

Q. Did your engine go into Iowa and back?

A. Yes, it did. On the trip going west it did not, but on the following day coming east we went from Hamilton to Keokuk, and then back to Peoria.

Q. Did you take some cars from Hamilton over that morning?

A. Yes, we did.

Q. Were they cars that were in the train the day before?

A. I am quite sure they were.

Q. On the way back did you bring cars from Iowa into Illinois?

A. Yes.

Q. Is that the usual schedule for that train? To go  
287 to Hamilton and remain overnight, and then on into  
Keokuk the next morning to complete its trip west?

A. That is the usual procedure, yes, sir.

Q. That is its schedule?

A. That was not a scheduled train I was on, but it is  
the usual procedure.

Q. The usual procedure, I mean.

A. Yes.

Q. Was there any damage done to the cab of that en-  
gine by these rocks at Hollis?

A. Yes, windows were broken out and the window sash  
were broken, arm rest. Even the back of the seat box was  
broken.

Q. That is on the right hand side of the engine?

A. The engineer's seat box on the right hand side was  
broken, yes, sir.

Q. Any gauges broken that you recall?

A. Not that I recall.

Mr. Heyl: Cross examine.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Carnarius, you live at 228 Gilbert, as I under-  
stand it?

A. Yes, sir.

Q. And you have been employed by the T. P. & W. for  
fourteen years?

A. Yes, sir.

Q. How long have you been employed there as a lead  
car inspector?

A. A little over four years.

Q. What kind of work did you do before that?

A. I was trainmaster.

288 Q. And who did you discuss this matter with before  
coming in here to testify?

A. Before coming in here to testify?

Q. Yes.

A. I just don't know what you mean about discussing  
the matter.

Q. Who did you discuss your testimony with prior to  
coming in here?

A. I didn't discuss it with anybody. After making the  
trip,—

Mr. Heyl: Let him answer. I am objecting to interfering with the witness's answer.

The Court: What is the question before him?

Mr. Knoblock: I think it is answered.

The Court: I thought it was.

What is it?

(Question and answer read by reporter.)

The Court: I think he can tell what he did.

A. After making the trips I made reports covering the different occurrences on the trip.

Q. Who did you make this report to?

A. To the trainmaster's clerk.

Q. Who are they?

A. The trainmaster's clerk was William Hunter.

Q. And he is the only one to whom you made any report whatsoever?

A. Yes, sir.

Q. And he is the only one to whom you communicated what your knowledge was concerning these incidents, is that right?

A. Yes. I don't recall talking to anyone else at all.

Q. You have never discussed it with Mr. McNear?

A. No, sir.

Q. Or with the attorneys involved here in this case?

289 A. No, sir.

Q. I didn't think you had.

A. I positively haven't.

Q. Now, you were on this train on December 30, 1941, called "extra 43 east". That was from Hamilton to Peoria, is that right?

A. Yes, sir.

Mr. Heyl: He said December 31.

Mr. Knoblock: Let me ask the question.

Q. As I recall it, you testified on December 30, 1941, you were on extra 43 east from Hamilton to Peoria, is that correct?

A. Yes, sir.

Q. Then that would be coming back toward Peoria?

A. Yes, sir.

Q. And you recall something there at the Nickel Plate crossing in Peoria, is that right?

A. Yes, sir.

Q. Or is that in East Peoria?

A. That is East Peoria, just before entering the yard.

Q. Whatever was done there, you did not see who did it?

A. I did not see the man who did it.

Q. And you didn't see who any of the men were there on that occasion?

A. I didn't recognize them at that point.

Q. You recognized no one at that point?

A. No, sir.

Q. And if you recognized no one at that point, you don't know whether those men were pickets or not, do you?

A. No, I don't.

Q. On December 31, 1941, you went as a conductor on the extra train west which left East Peoria at 9:57, 290 and went to Hamilton, is that right?

A. Yes, sir.

Q. And you returned to Peoria on January 1, 1941, and the engineer in charge at that time was L. C. Ward?

Mr. Heyl: 1942?

Mr. Knoblock: 1942 is correct.

Q. On which one of those trips did you have armed special agents on those trains?

A. We had them on both trains.

Q. What were their names?

A. William Kane, and a man by the name of James.

Q. Where is Kane from?

A. I couldn't tell you.

Q. Is he from Chicago?

A. I do not know.

Q. Where is James from?

A. I do not know.

Q. Do you know who hired them?

A. I know they were employed by the company, and that they were on the train. That's all I can say.

Q. They were on there under the company's direction and under the company's control?

A. Yes, sir.

Q. And they carried loaded guns?

A. I suppose they were loaded. They had guns. I didn't see any bullets.

Q. You didn't see any bullets?

A. No, sir.

Q. Which one of these guards carrying these guns rode in the cab of the engine where you were?

291 A. Kane.

Q. As you proceeded west, starting out of Peoria,



you mentioned the position known as Swords' Siding, is that right?

A. Yes, sir.

Q. Will you tell us just where that is?

A. Swords' Siding is sort of a team track.

Q. Sort of what?

A. Team track for unloading cars. There is a concrete pavement there alongside of the hard road just on the east side of the Illinois River bridge, just a short distance beyond the bridge.

Q. And where were you on that occasion on the train?

A. I was on the engine.

Q. And at that time this guard Kane was there with his gun?

A. Kane was there.

Q. And Ward was there?

A. Yes, sir.

Q. And yourself?

A. Yes, sir.

Q. Anybody else in the cab at that time?

A. The roadmaster, Lawson.

Q. What is his first name?

A. Ernest.

Q. Ernest Lawson? And anybody else?

A. Yes, the fireman.

Q. What was his name?

A. There were two firemen. One was named Harvey and the other was Bert Taylor.

Q. Where is Bert Taylor from?

A. I couldn't say for sure, but I believe it's Hamilton. I couldn't say for sure.

292. Q. What was his work prior to being employed by the T. P. & W.?

A. I don't know.

Q. How long had he been employed on the T. P. & W. that day?

A. That is something I couldn't tell you, although I believe he went on strike in 1929.

Q. But from 1929 to now you didn't know where he was?

A. No, sir, I do not.

Q. Where had Ward been employed prior to that time?

A. He had been a hostler in the round house, and also a fireman on the pusher engine.

Q. At this Swords' Siding you say you saw William L. Brown and Frank Reiman, is that right?

A. Yes.

Q. There were other employees there or people there, but you don't know who they were?

A. That's right.

Q. Where was William L. Brown and Frank Reiman standing?

A. They were standing between the hard road and the first track from the hard road. I couldn't say definitely whether they were on the company property, but it did seem to me that they were practically on the line of company property. That is about as near as I can tell you.

Q. How far were they from the track?

A. I couldn't say offhand.

Q. What is your best judgment?

A. Oh, I would say probably twenty feet.

Q. And you were able to identify those two men quite positively, but no one else?

A. Not right at that time.

293 Q. That is what I mean, at this time.

A. That's right.

Q. How many bricks would you say those two men threw that you saw?

A. They were rocking pretty fast.

Q. I am asking how many they threw, if you knew.

A. Well, I'm sorry that I didn't count them.

Q. You don't have any rough idea?

A. No, I don't. I couldn't say just how many people were throwing, but bricks were coming in fast.

Q. I am asking about these two men.

A. Yes.

Q. The ones you have identified.

A. I couldn't say how many bricks were they threw.

Q. You couldn't?

A. No.

Q. The occasion of the Nickel Plate crossing that you referred to, you don't know who threw anything on that occasion?

A. Going into the yard, no, sir.

Q. Now, at the Cedar Street bridge you didn't see anybody throw anything there, did you?

A. No, sir.

Q. And you don't know whether—where they came from, or who threw them?

A. No, I don't.

Q. Now, the next place that you observed them was at Hollis, is that right?

A. We stopped at the M. & St. L. crossing.

Q. And then proceeded to Hollis?

A. And then proceeded to Hollis.

294 Q. How many cars did you have on your train when you got into Hollis?

A. I don't remember.

Q. What is your best judgment?

A. It seems to me we must have had something like seventeen.

Q. About seventeen?

A. Yes.

Q. What day are you referring to now?

A. That is on December 31.

Q. And when you got to Hollis, what portion of the train were you riding on?

A. On the engine.

Q. And where did the engine stop with reference to the phone booth?

A. About two cars lengths west of the phone booth.

Q. Of the phone booth, and how many feet would you say that would be, according to your best judgment?

A. Probably about ninety.

Q. And are there any other tracks there at this point besides the track upon which your train was traveling?

A. Yes.

Q. How many more?

A. I think there are three tracks.

Q. And on which side were those tracks from the track on which you were traveling?

A. Well, between the engine and the telephone I say we were about three tracks. On the other side, do you mean?

Q. Yes, sir.

A. You mean on the other side of the engine cab?

Q. Yes.

295 A. I believe there are two tracks there.

Q. Which side do you say that Jerry Underwood, John Gimming, William and Garland Brown and William Christoff were standing?

A. Well, they were standing in between the cars, right up against the cars, on what we call—I believe that is called the new track.

Q. Which side of your train?

A. On the right hand side of the train.

Q. On the right hand side?

A. Yes, sir.

Q. How many tracks would you say were on the right hand side?

A. Two tracks.

Q. Two tracks?

A. Yes, sir.

Q. How long a cut of cars standing there?

A. I don't know.

Q. What is your best judgment?

A. I couldn't tell you at all.

Q. Was it more than one car?

A. There were more than one, yes, sir.

Q. They were all together?

A. Yes, sir.

Q. You say these men were standing between two of these cars and throwing, is that right?

A. Yes, sir.

Q. They were all standing there together?

A. They were standing at the opening of the cars, between the cars.

Q. Were they standing there together?

A. They were standing there. All I could see at 296 one time was about two men, and they would keep changing positions, and the opening of the cars was lined up directly with the engine cab where it happened to stop.

Q. If that engine cab had been, say, forward or back twenty-five or thirty feet, it would not have been opposite that opening, is that right?

A. That's right.

Q. How long did you say that your train stood there?

A. Approximately ten minutes.

Q. Did you leave the cab of the engine at any time?

A. Yes, sir.

Q. When did you leave the cab of the engine?

A. Just immediately after we stopped.

Q. Where did you go?

A. To this telephone booth.

Q. How long did you remain there?

A. Oh, I didn't stay there over two minutes. It didn't take me over two minutes.

Q. You did the telephoning?

A. I did the telephoning.

Q. Anybody else with you?

A. No, sir.

Q. Where did you go after you left the telephone booth?

A. Right back up in the engine cab.

Q. What did you do after you got in the cab of the engine?

A. I told the engineer to proceed.

Q. You say you stood there about ten minutes altogether?

A. He was unable to release the brake valves.

Q. I didn't ask you that. You said you stayed there  
297 about ten minutes altogether?

A. Yes, sir.

Q. As I understand you on direct examination, you claim by reason of this stone-throwing you were delayed three or four minutes?

A. At least so.

Q. The other three or four minutes did you remain there to see who those men were?

A. Of course, it took me some time to go to the telephone booth and back. You asked me how long I was in the telephone booth. I was there, over there, a couple of minutes.

Q. At the time this took place there, this guard by the name of Kane with his gun was in the cab of the engine?

A. Yes, sir.

Q. What did he do?

A. I don't know what he did while I wasn't in the cab.

Q. While you were.

A. While I was there? He was simply dodging bricks like the rest of us.

Q. That is what he was doing?

A. Yes, sir.

Q. Did any of your men ask them to stop?

A. Ask them to stop throwing bricks?

Q. Yes.

A. No, sir.

Q. You did not?

A. No, sir.

Q. When you got back and made out your report, did you or anyone swear out warrants for these men?

A. I did not.

298 Q. Did you or the company make any steps toward prosecution?

A. I couldn't say. I didn't.

Q. You didn't?

A. No, sir.

Q. Did you at that time when you returned complain to any of the authorities?

A. I made my report, yes, sir.

Q. I mean the public authorities.

A. No, sir.

Q. And you haven't yet?

A. No, sir.

Mr. Heyl: You personally?

A. I personally didn't.

Q. Now, as I understood you, when you testified on direct examination here, you saw these men as you glanced out the cab? The window of the cab?

A. I kept looking at every opportunity.

Q. And you kept going back and forth with your head to see if you could see who was doing it, is that right?

A. Yes, sir.

Q. And you kept that up for about how long?

A. As long as we were standing there.

Q. Was the window broken that you were looking through?

A. Yes, sir.

Q. There was no window there, is that right?

A. No, sir. That's right.

Q. Now, this occasion at Hollis, what day was that again that happened?

A. That was December 31.

299 Q. Were you the only one in the cab there that was observing these men?

A. No, I think some of the rest of them also recognized the men that were there.

Q. I see. Now, you say that you recognized the car of Jerry Underwood?

A. Yes.

Q. Where did you recognize that?

A. Where?

Q. Somewhere near Canton?

A. At different points along the hard road.

Q. Where was the last time you saw it near Canton?

A. Well, that was pretty hard to say. I never kept a mental note of it at all.

Q. What is your best judgment?

A. About all I can say there is that I saw it at several different places along the hard road—

Q. At or near Canton?

A. —as we were going toward Canton.



Q. What kind of a looking car is it?

A. It is sort of a maroon color.

Q. What make?

A. I believe it is a Dodge. I recognized the shape of the car, a very streamlined model.

Q. You can't tell us with any degree of certainty just where you saw it near Canton?

A. No, I couldn't.

Q. You don't know whether it was one or two miles of Canton, or where?

300 A. That is right. I didn't make a note.

Q. You didn't recognize anybody there, did you?

A. I didn't recognize anyone in Canton, no, sir.

Q. You don't know who was there at Canton?

A. No, sir, but the brickbats were coming in through the windows.

Mr. Knoblock: I disclaim the answer.

The Court: It may be disclaimed.

Q. You didn't recognize any of them there?

A. No, sir.

Q. You didn't see any of them?

A. No, sir.

Q. Ernie Lawson, the roadmaster, how far did he travel with you on that trip?

A. All the way.

Q. All the way and back, is that right?

A. Yes, sir.

Q. In what capacity was he there?

A. He was roadmaster and acting as pilot.

Q. Acting as pilot?

A. Yes, sir.

Q. Before you were—You are now a car inspector, is that right?

A. That's right.

Q. Did I understand you to say you were at one time a trainmaster?

A. Yes.

Q. Is it a promotion or demotion of car inspector to trainmaster?

Mr. Heyl: I object as immaterial.

The Court: What is the difference? I can't see it.

Objection sustained.

Mr. Knoblock: That's all.

301 *Redirect Examination by Mr. Heyl.*

Q. You were asked with reference to certain special agents having guns in their possession.

A. Yes, sir.

Q. Did you see these guns displayed by either of these special agents at any time on either of these trips when the trouble was going on?

A. Do you mean did they draw the guns?

Q. Yes.

A. No, sir, I didn't see that. In fact, I told them not to use them on my train.

Mr. Knoblock: I object.

The Court: Objection sustained.

Q. Did they use or show them at the time these strikers were about?

A. Not in my presence.

Q. Were any shots fired at any time—

A. No, sir.

Q. —in your presence?

A. Not at all.

Q. On either of these trains?

A. No, sir.

Q. You were asked with reference to the number of men that were throwing stones when the train was over at the viaduct in East Peoria, and you gave the names of two men to Mr. Knoblock in response to his question as being two persons throwing. Were there others of that crowd throwing?

Mr. Knoblock: I deny that; not at the viaduct, but at Swords' crossing.

A. That's right.

302 Q. Were there other men throwing?

A. There were other men there. As I said, I did not recognize the rest of them but, from the number of bricks coming in through the windows, there had to be more than two men throwing bricks.

Mr. Knoblock: I object, and move it be stricken.

The Court: I think that is a question for the court to decide. He testified there it was a great barrage of bricks being thrown. I don't know how his judgment would be better than anyone else's.

Objection sustained.

Mr. Heyl: I think that is all.

The Court: Anything further in cross-examination?

Q. Did you or not give any instructions or directions to any special agents in your charge on either of these trains with reference to the use of any gun?

A. After I saw—

The Court: Answer the question.

Is there an objection?

Mr. Knoblock: There is no showing here that they were under his charge.

The Court: Were you in charge of the train?

A. I was in charge of the train.

The Court: Did you have a conversation relative to that?

A. I did. I think I answered the question.

The Court: Read it to him.

(Question read by reporter.)

A. I told them not to use their guns.

Q. When did you tell them that?

A. After I saw what the situation was, after we left 303 the yard on December 31. We were being so heavily rocked on the way over to the bridge I was afraid somebody might get a little bit too mad, so that was one of my reasons for dropping off of the engine and going back to the caboose as we were passing by the depot. I told the men on the rear end, I told the men on the head end, not to use their guns at all.

Mr. Heyl: That's all.

*Recross Examination by Mr. Knoblock.*

Q. You were in charge of the train on this day, is that right?

A. Yes, sir.

Q. Are there any rules, operating rules, of a railroad giving you, in your capacity there, charge of any special agents?

A. No, sir, except that a conductor is in full charge of his train.

Q. But there is no operating rule to that effect that applies to special agents?

Mr. Heyl: I object as immaterial.

The Court: He said there wasn't.

Q. You took this upon yourself to take charge or supervision, or did somebody else give you authority?

A. Nobody else told me about it.

Mr. Knoblock: That's all.

Mr. Heyl: That's all.

304 (Recess.)

I. H. HULTGREN, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Elliott.*

Q. Mr. Hultgren, what is your business?

A. I am signal supervisor of the Toledo, Peoria & Western.

Q. And are you familiar with the location of the lane which leads from the yards up to the hard road 24?

A. Yes, sir.

Q. Did you have anything to do with putting in a light there recently?

A. Yes, sir, I put a light in.

Q. Tell us when you put that light in.

A. The light was put in service just prior to 3:30 on January 30.

Q. On January 30?

A. December 30.

Q. December 30 last?

A. Yes.

Q. That was put up under your supervision?

A. Yes, sir.

Q. That was connected up so it burned from that time on?

A. Yes, sir.

Q. Did you also put a light at the west end of the yard?

A. Yes, sir, I did.

Q. And on what date was that put in, and where was it located?

A. December 29, and it is just adjacent or just east of our watchman's shanty.

305 Q. Near the viaduct?

A. Yes, sir.

Q. And on which side of the track was that put?

A. That is on the south side of the track.

Q. South side of the track?

A. Yes, sir.

Q. Has that been connected up so it was burning since you put it in?

A. Yes, sir, at night.

Q. Explain how and to what extent this light at the end of the lane leading onto the hard road illuminates.

A. It illuminates to about the edge of the pavement, and it goes back on down into our lane until its intensity passes out.

Q. Have you observed that since it has been put in?

A. Daily.

Q. And nightly?

A. It is dark when I leave every night.

Q. And you have observed it each day as burning?

A. Yes, sir.

Q. Did you come out of the lane one day last week with Mr. Wehr?

A. Yes, sir.

Q. Tell us what you found on the lane leading down from the hard road to the T. P. & W. yards.

A. As we were driving out, we noticed several roofing nails scattered across the lane for some distance.

Q. And what, if anything, did you do with reference to that?

A. After we returned from our business, we stopped before we ran into them, and I got a broom and swept the road clear.

Q. What quantity of nails did you find there on that roadway?

A. There was more than half the lane covered for  
306 the entire width of the lane.

Q. And where was it? Was it at the end of this lane where the picket line was?

A. It's at the north end, yes, sir.

Q. That is where the pickets were stationed?

A. Yes, sir.

Q. Was it after the pickets were stationed there that you observed these nails?

A. Oh, yes.

Q. Did you, as you passed in and out of that lane, observe as to whether any of the pickets at this lane had clubs?

A. I remember seeing one with apparently a table leg.

Q. Did you recognize the name of that party?

A. I believe engineer Kirk was carrying that club.

Q. Is that Verd Kirk?

A. Yes, sir.

Q. Did you or not observe other clubs there in that vicinity stacked up against the railing?

A. I don't remember that.

Q. There were some nail kegs out there by the pickets? Sitting in this driveway at any time?

A. I don't remember those.

Q. You didn't see that?

A. No.

Q. Do you remember the night Mr. Merrill was injured?

A. Yes, I do.

Q. Was this light put in before or after that time?

A. It was put in prior to that time.

307      *Cross-Examination by Mr. Knoblock.*

Q. What did you say your first name was?

A. The initials, I. H., or I-v-a-r.

Q. Hultgren?

A. H-u-l-t-g-r-e-n.

Q. Where do you live?

A. At 305 North Main Street, Washington, Illinois.

Q. How long have you been employed by the T. P. & W.?

A. Since March of 1936.

Q. And all that time as signal supervisor?

A. Yes, sir.

Q. Where was your work prior to that?

A. The Chicago Rapid Transit Company of Chicago, Illinois.

Q. You left that employment up there to come here, is that right?

A. Yes, sir.

Q. Now, you testified here about a light installed December 30, 1941.

A. Yes, sir.

Q. When did you first start to work on that light?

A. About 8:30 A. M., December 30.

Q. And did anyone assist you?

A. Yes, sir.

Q. Who was that?

A. Our division light man, E. L. Snyder, shop electrician R. E. Green and his helper.

Q. What is the helper's name?

A. I don't know his name.

Q. You say that you started about 8:30 that morning. Where did you run your line from?



308 A. We ran it from a building on the east side, from a residence there.

Q. You mean the residence that's facing the hard road?

A. Yes, sir, on the south side of the hard road.

Q. How far is that residence from this lane?

A. I imagine about forty feet.

Q. North or south, or east or west of it?

A. East.

Q. And you say it was put—this light was put into operation about 3:30 that afternoon?

A. It was tried at 3:30, and turned on when it began to become dark.

Q. Do you know who turned it on?

A. I don't recall the watchman on duty at that time.

Q. That was the first day that it was used?

A. Yes, sir.

Q. And what hour was it turned on?

A. I did not see it turned on.

Q. All right! Now, then, you spoke of another light that you installed the day before this one, is that right, December 29?

A. Yes, sir.

Q. And that, you say, is near the viaduct on the T. P. & W. track, is that right?

A. Yes, sir.

Q. Which viaduct do you mean by that?

A. That's highway 150.

Q. Is that the one that—The viaduct you mean, is that the one that is over the T. P. & W. tracks that is a part of the highway that leads to Morton, Illinois?

A. Yes, sir.

309 Q. Which direction from the viaduct is that light?

A. The light is east.

Q. East of the viaduct? About how far east?

A. I would say about a hundred feet.

Q. And this light is on the south side of the tracks?

A. Yes, sir.

Q. About how far south of the tracks?

A. It is less than fifty feet.

Q. I see. Now, the light that you had installed there at the end of the lane, as I understand it, that illuminated northerly to about the edge of the pavement?

A. That is on Heppe's lane?

Q. Yes.

A. That is right.

Q. And then it illuminates, as you say, down to the yard until its light becomes less?

A. That's right.

Q. Now, with reference to these roofing nails that you have testified to, what day did you first observe them?

A. On the night of the 29th.

Q. On the night of the 29th? What hour of the day would you say that was?

A. It was after, just after, 8 P. M.

Q. It was after 8 P. M., and were you driving in a car on that occasion?

A. I was driving the truck that is assigned to the electrical department of the railroad.

Q. And Mr. Wehr, did you say, was with you?

A. Yes, sir.

310 Q. And as you drove out of the premises that evening, is that when you noticed the nails?

A. Yes, sir.

Q. How did you happen to notice the nails, Mr. Hultgren?

A. They were brand new roofing nails, and the reflection from the headlights pointed at them, or we could see them.

Q. I see. You don't know how they were placed, do you?

A. I do not.

Q. And you did not see anyone place them there, did you?

A. No, sir.

Q. As far as your knowledge goes, you don't know of anyone who did place them there?

A. No, sir.

Q. They were along this lane how far toward the round house? How far south from the edge of the pavement would you say they extended?

A. They began between thirty and forty-five feet, and then extended a considerable distance down the lane.

Q. About how far, would you say?

A. It appeared to me to be plus or minus half of the lane. There was a good many on the lane, and for the entire width of the lane.

Q. And the T. P. & W. has a shanty there on that lane?

A. That evening the only building was in the yards itself.

Q. Isn't there a guard stationed there twenty-four hours a day somewhere?

A. That was installed at the head of the lane on December 30.

Q. That was installed there on December 30? You say you first noticed these tacks on what day?

311 A. On the 29th.

Q. And that was the day before you installed the light there at the end of the lane?

A. That is right.

Q. You mentioned that you saw Verd Kirk with a table leg in his hand, is that right?

A. Yes, sir.

Q. The pickets there—This weather during this period of time was pretty cold, wasn't it?

A. Yes, sir.

Q. And they had fires built there, didn't they?

A. Yes.

Q. They were built there for the purpose of keeping warm, isn't that right?

A. Yes.

Q. A great portion of the fuel they used was sticks and pieces of boards, and you might call them clubs and so forth, as fuel, isn't that right?

A. On the 30th some of the employees complained to me of the coal that was sent by the management of our railroad.

Q. And they used wood?

A. Yes.

Q. And you observed some of the pickets stirring up this fire with pieces of sticks to get it to burn better?

A. They were tree limbs.

Q. You never, on any occasion, saw Verd Kirk use this table leg toward anyone in a menacing manner, or threatening anyone?

A. No, sir.

Q. They at no time ever threatened you coming out  
312 of there, did they?

A. No, sir.

Q. And you never saw them threaten anyone else as they went in and out of the lane there, did you?

A. No, sir.

*Redirect Examination by Mr. Elliott.*

Q. You are not a member of either of these Brotherhoods, are you?

A. I am not.

Q. What character of a light was that which was installed near the west end of the lane?

A. The power of the light up by the viaduct, is that what you refer to?

Q. Yes.

A. That is a reflector type light; and we are using a thousand watt light bulb in that lamp.

Q. Does that light up all of the vicinity?

A. It gives you illumination in a general area of not less than five-tenths of foot candle, which is prescribed for protected areas.

Q. How far does that light extend out from where the light is located?

A. The projected light?

Q. The projected light, yes.

A. From the fence that is at the edge of the lane or driveway going to the ice house, it goes beyond the west side of the viaduct, and covers the roadway on the south side of the track coming into the ice house.

313 Q. And about how many feet would that be from the extreme east of the light to the extreme west of the light, approximately?

A. One hundred and fifty feet.

Q. Now, you have spoken—I understood you to say on direct examination that you and Mr. Wehr went back after you had come out the first time and noticed these nails.

A. Yes, sir.

Q. How long were you gone?

A. About a half hour.

Q. And when you came back were there more or less nails on this driveway than you had noticed as you went out?

Mr. Knoblock: I object to that. I don't see how this witness could determine that.

The Court: I don't know but, if he can, tell it.

Was there more or less?

A. There appeared to be more because we went into them before I saw them coming out.

Q. You swept the nails off?

A. Yes.

Mr. Elliott: That's all.

*Recross Examination by Mr. Knoblock.*

Q. Mr. Hultgren, you were not in a position to make any count of those nails, or to estimate how many were there on either trip, were you?

A. No, I couldn't estimate the amount that was there.

Q. How high is this light situated from the ground that you put at the viaduct?

A. Approximately twenty feet.

314 Mr. Knoblock: I think that's all.

*Re-redirect Examination by Mr. Elliott.*

Q. What is the candle power of that light—

Mr. Knoblock: I think that has been testified to.

Q. —at the lane?

A. Not at the lane.

The Court: I will let him testify to it.

What is it?

A. We have a thousand watt flood bulb in there.

Mr. Elliott: That's all.

315 LARRY WARD, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Larry Ward.

Q. Speak up.

A. I am a little hoarse. I have got a cold.

Q. How old are you?

A. Fifty-six.

Q. Where do you live?

A. I live at 217 Arthur, Peoria.

Mr. Knoblock: Arthur or Archer?

Q. Peoria, Illinois?

A. Arthur, Peoria, Illinois.

Q. And what is your business or occupation?

A. I have been hostler and roundhouse foreman and laborer and boilermaker and machinist and everything, you might say, in the railroad business.

Q. Have you ever operated a locomotive?

A. Yes, sir.

Q. I will ask you if, on December 31, 1941, you were the engineer on extra train 43 west?

A. Yes.

Q. And, now, what time—

Mr. Knoblock: What day was that?

Mr. Heyl: December 31, 1941.

Q. Is that correct?

316 A. Yes.

Q. What time did you leave the yards of the plaintiff in East Peoria on that date?

A. Well, around 9—I don't know; it was around 7:30, I think.

Q. What was the destination of that train?

A. Hamilton.

Q. As you traveled west from the East Peoria yard, what, if anything, happened? What was the first thing that happened?

A. We were stoned as we went under the viaduct.

Q. And that was the Nickel Plate crossing, or near there?

A. Yes, sir.

Q. Did you recognize anyone at that crossing throwing stones?

A. Well, I didn't see anybody throw stones, but when they quit hitting the cab and I looked back, there I saw Christoff and Herman Siebenthal.

Q. That is W. J. Christoff?

A. Yes.

Q. And Herman J. Siebenthal?

A. Yes.

Q. Did anyone of them make signs or motions at you?

A. Christoff shook his fist at me, but Siebenthal never made a move.

Q. Now, do you know where the stones that were thrown came from? Which direction?

A. They came from the north side of the track.

Q. Where, with reference to the position these men were standing when you saw them?

A. They were standing on the north side of the track.



Q. Where did the stones come from with reference 317 to where you saw these men? Did they come from that direction?

A. Yes, sir.

Mr. Knoblock: I object to that. It is very leading.

The Court: He has answered. Perhaps we will save time by doing it.

Q. Did you see any other men there?

A. No, sir, I didn't see anybody else.

Q. Just the two?

A. Just the two.

Q. How many stones were thrown at you at that place?

A. I couldn't say.

Q. More than one?

A. Yes, more than one.

Q. You didn't have time to count them?

A. No.

Q. Is that what you mean?

A. Yes.

Q. Did you have any difficulty at the East Washington Street crossing?

A. No, sir.

Q. Or West Washington Street crossing?

A. No, sir.

Q. Swords' Siding?

Mr. Knoblock: No difficulty at East or West Washington Streets?

Q. Did you stop at Swords' Siding?

A. No. Where is Swords' Siding?

Q. It's east of the lower bridge. That is the Peoria and Franklin Street bridge.

A. I stopped there for the board.

318 Q. Did you see John Feuger or Herman Reiman any place?

A. I saw them on the Washington Street crossing.

Q. On that same trip?

A. Yes.

Q. Did either of these men have anything in their possession?

A. Reiman had a brake club.

Q. What is a brake club?

A. It's a stick that you wind up the brakes with to set them on a car.

Q. Wood or iron?

A. Wood.

Q. How large is that?

A. Well, it's about three feet in length, and an inch and a half or inch—

Mr. Knoblock: Inch and a half what?

A. —in diameter.

Q. Did you see him do anything with that club?

A. He just drew back like he was going to throw it, but he didn't throw.

Q. Where was he looking when he drew back?

A. At the engine.

Q. Did Feuger do anything?

A. No, sir.

Mr. Knoblock: What?

A. No.

Q. Did he have anything in his hand?

A. No.

Q. Did he make any motions?

A. Just pointed his finger.

319 Q. Where?

A. At me.

Q. How did he do that?

A. Just like that (illustrating).

Q. Was there any fire around there at that place on the ground?

A. I didn't see any.

Q. Reiman wasn't making a fire?

A. No, sir.

Q. Or stirring any fire?

A. No, sir.

Q. From that point west, did you observe anyone following your train, that is, anyone on the highway following your train?

A. Yes, sir.

Q. Tell the names of the persons that you observed.

A. Jerry Underwood's car, and Dilley.

Q. G. L. Underwood?

A. Yes.

Mr. Knoblock: What is that?

(Answer read by reporter.)

Q. Who else, now?

A. And one of the Brown boys' cars.

Q. Was that W. L. Brown?

A. Yes.

Q. Did you observe the men that were riding with these men?

A. Well, not at that time, no.

Q. Did you later?

A. Yes, sir.

Q. Give me the names of the ones that were riding with these men.

A. Well, I observed in Underwood's car John Gim-  
320 ming, Christoff and Gabbert.

Q. C. S. Gabbert?

A. Yes.

Q. Were there men riding in the cars that you did not recognize?

A. Yes, sir.

Q. How far did these three cars follow your train?

A. To Canton.

Q. How often did you see them between Peoria and Canton?

A. Well, I didn't see them. I had to watch where I was going. I couldn't see them half of the time they were throwing stones. I had to watch the engine, and watch where I was going.

Q. How far is it from Peoria to Canton?

A. About thirty-two miles.

Q. Do you know the occupants of the other cars?

A. No, I don't.

Q. Now, where did these men who were in these cars begin stoning your train?

A. Down at the bridge.

Q. Which bridge?

A. Franklin Street bridge, when we were stopping for the board.

Q. East of the Illinois River?

A. Yes.

Q. Where did they stone you next?

A. The first street the other side of Cedar Street bridge.

Q. The first what?

A. The first street the other side of Cedar Street bridge. I don't know what it is.

Q. Persimmon Street?

A. Down there somewhere.

321 Q. What happened as the result of this stoning of this train?

A. They broke the headlight there.

Q. Did you see the man that threw the stone that broke the headlight?

A. Yes, sir.

Q. Who was that?

A. Gabbert.

Q. C. S. Gabbert?

A. Yes, sir.

Q. What else did he do?

A. I didn't see him do anything.

Q. What did the others do?

A. I didn't see anybody else.

Q. Were there other men?

A. There were other men there, but I didn't recognize them.

Q. Now, how far were these men from your engine when they were throwing these stones?

Mr. Knoblock: I didn't get that question.

(Question read by reporter.)

A. I should say about thirty feet.

Q. Now, was roadmaster E. A. Lawson with you?

A. Yes, sir.

Q. I will ask you if, at that point that you have just indicated,—if there were any statements made by the crowd of these men to Mr. Lawson?

A. Yes, they wanted him to get out of the window. They didn't want to hit him, I was the guy they wanted to get.

Q. Is that what they said?

A. Yes.

322 Q. Who made that statement?

A. Underwood, for one.

Q. Anybody else?

A. Well, I couldn't say.

Q. Did he say anything further with reference to what he wanted to do to you?

A. He said I would never get to Hollis.

Q. What else did he say?

A. He said he was going to kill me.

Q. Who said that?

A. Underwood.

Q. Did he have anything in his possession when he said that?

A. I couldn't say. I wasn't looking out the window, and didn't see him.

Q. Who else was there?

A. Dilley was there.

Q. H. J. Dilley?

A. Yes. I couldn't say who the others was because I couldn't stick my head out.

Q. These were all former employees of the T. P. & W., were they?

A. Yes, sir.

Q. Were they men who were on strike?

A. Yes, sir.

Q. Where was the headlight located that was knocked out of that locomotive?

A. Down there below Cedar Street bridge.

Q. You have stated that was Gabbert?

A. Yes.

Q. Did you see that headlight broken?

323 A. Yes.

Q. Where did Gabbert stand when he threw the stone that broke the headlight?

A. He got out on the street crossing. He couldn't hit it any place else. He couldn't hit it from Cedar Street, so he got on the crossing.

Q. When the locomotive came on the crossing?

A. Yes.

Q. How close was he to the locomotive when he hit the headlight?

A. I would say about twenty feet.

Q. Did you pass on with the locomotive?

A. I never stopped.

Q. Did he say anything to you?

A. No.

Q. Where were these men when this statement was made to you they were going to kill you?

A. At the Franklin Street bridge.

Q. At the Franklin Street bridge?

A. Yes.

Q. How close were they to the locomotive when they made that threat?

A. Oh, around thirty feet.

Q. What happened at Hollis?

A. Well, we pulled into Hollis, and somebody holiered "Stop" so the conductor would be protected by the train to go get the orders, so I stopped, and, when my engine stopped, the cab was right between the cars parked on the

siding, and then the bombardment commenced. They even knocked the window frames of the windows, and they dropped down on the floor they hit it that hard.

324. Q. You mean the window frames in the cab?

A. Yes.

Q. Where were you at that time?

A. Up in the corner of the cab.

Q. What were you trying to do?

A. Keep out of the way of those bricks?

Q. Any brick hit you?

A. Not there.

Q. What about the air at that point?

A. Well, of course, I guess I must have given it a little too much air, and had to wait for it to pump off; to get up, I had to raise like this (illustrating) to reach my air and throttle.

Q. Why did you reach back?

A. To keep the bricks from hitting me.

Q. In other words, you couldn't remain in your seat?

A. No, sir, not in the window.

Q. How long did that bombardment of bricks continue while your engine was at that point?

A. I don't know; three or four minutes.

Q. Can you identify any of the men that were there throwing bricks at that time?

A. No, sir.

Q. Who was in the engine with you?

A. Well,—

Q. The conductor?

A. The conductor was there.

Q. What is his name?

A. Carnarius.

Q. That is the Carnarius that has testified in this case?

325. A. Yes, sir.

Q. Did you see anything happen to the conductor while this bombardment was going on?

A. No, I looked around and seen his mouth bleeding, and I said, "What happened?" and he said, "I got hit by a brick."

Mr. Heyl: That is a part of the res.

The Court: That may be stricken.

Mr. Heyl: He can tell what he saw. That stands, or is that stricken, too?



The Court: I will permit him to tell what he saw. He said his mouth was bleeding.

Mr. Heyl: I didn't understand what you meant.

The Court: Not the entire answer, but that part.

Mr. Heyl: A part of the res, spoken at the time it occurred, would be competent. That has been the rule: Any declaration made at the time. Under that theory, I think it would be competent.

The Court: No, that may be stricken. He may state what he saw.

Q. You saw the marks on the conductor, did you,—

A. Yes.

Q. --and the blood?

A. Yes, sir.

Q. And when did you see that with reference to the time these bricks were coming in the window? At that time?

A. At that time.

Q. After you left that point, the next stop was Wheeler's crossing, or the next point you saw these men was Wheeler's crossing?

A. Yes, sir.

326 Q. You didn't stop there?

A. No.

Q. Tell what happened at Wheeler's crossing.

A. As I was approaching Wheeler's crossing, Underwood drove up within ten feet of the track and parked his car.

(Answer read by reporter.)

Q. I want to leave that a moment, and go back to the Pekin road crossing. Did something occur there?

A. No, sir.

Q. Nothing that you observed.

A. No.

Mr. Knoblock: I object to that.

The Court: He has answered.

Mr. Heyl: I want to confine it to his knowledge.

Q. What did Underwood do at the Wheeler crossing when you saw him?

A. He got out with a brick, and got as close to the engine as he could get, and throwed it through the front window of the cab, and the brick hit the side of the window, and went down and struck me in here (indicating right side).

Q. Where are you pointing?

A. Right on my groin.

Q. The right groin?

A. Yes, sir.

Q. Go ahead?

A. That knocked me out for, oh, five or ten minutes, and they wanted to stop the train and I wouldn't let him. I couldn't talk, but I could keep their hands off the throttle. By the time I got half down to Mapleton, I was all right and proceeded.

Q. What was the name of that Underwood? What is his given name?

327 A. They call him "Jerry".

Mr. Heyl: Is he in the court room? Jerry Underwood there? Stand up!

The Court: I think we can avoid that.

You know Jerry Underwood, do you?

Q. Do you see him in the court room?

The Court: He says he is the man. That's sufficient.

A. I can't see him.

Q. Was there anyone with Underwood at that time?

A. Yes, John Gimming and Gabbert.

Q. Where were they?

A. Underwood gets alongside of the engine and they get back there, and they throw cross fire, and I had to take one or the other, and I took Underwood.

Q. You dodged them?

A. I stayed far enough they couldn't hit me.

Q. Where were they?

A. They were on the hard road and, as he threw this way, they threw that way (illustrating).

Q. You identified those men at that time, and recognized them?

A. Yes, sir.

Q. Anyone else there you recognized?

A. He was going a pretty good speed of the car, and I don't know whether the others get out of the car.

Q. Was there another car?

A. There was cars behind his?

Q. How many cars?

A. Well, I don't know.

328 Q. Well, when you got about half way to Mapleton from that corner you revived, and did you see those men after that?

A. Glasford.

Q. At Glasford?

A. Yes.

Q. Whom did you see at Glasford?

A. Well, the Brown boys is all I seen. I didn't see—

Q. The Brown boys?

A. Yes, sir.

Q. What are their given names? Do you know?

A. Well, no, I don't.

Q. Were they former employees of the road?

A. Yes, sir.

Q. Where did you see them?

A. Well, they were on a road crossing, street crossing, on the left hand side of the engine.

Q. What did they do?

A. They threw stones at the engine.

Q. At the cab?

A. Yes.

Q. Any of them hit?

A. Nobody hit.

Q. Was the engine hit?

A. Yes, sir.

Q. What part of it?

A. Cab, broke the windows out on the left side. That was the first time the left side got any bricks was Glasford.

Q. That is the fireman's side.

A. Yes, sir.

329 Q. What was the fireman's name?

A. His name was Taylor.

Q. Then, after leaving Glasford, what was the next stop that you observed these same men?

A. Canton.

Q. How many of them did you observe?

A. I only seen one man.

Q. Who was that?

A. John Gimming.

Q. John J. Gimming? Was that the same Gimming you observed before?

A. Yes, sir.

Q. Where did you see him?

A. As I went across the C. B. & Q. crossing, I looked back, and he was the last man that threw a stone.

Q. You saw him throw?

A. Yes, sir.

Q. What did he hit?

A. The side of the cab.

Q. Which side?

A. The right side.

Q. Where did he hit?

A. I don't know.

Q. Was there more than one stone thrown?

A. Yes, sir.

Q. But that is the only one you can identify as being by the boys involved?

A. Yes, sir, that is the only one.

Q. What did he throw, if you observed?

A. Paving brick; half of a paving brick is what hit me.

330 Q. What became of that brick?

A. It laid on the engine until I got back. It is still on there as far as I know.

Q. Did you stop at the water tank in Canton?

A. No, sir.

Q. Why?

A. I was afraid to stop.

Mr. Knoblock: I object to that.

A. I was afraid to stop.

The Court: I think that may stand if that was the only reason.

Was that your only reason you didn't stop there?

A. Yes, sir.

The Court: Go ahead?

Q. Was there a usual stop there for water?

A. Yes, sir.

Q. Where did you go for water?

A. Bushnell.

Q. Was there anything that happened between Canton and Bushnell?

A. No, sir.

Q. Did you have an order to meet any train at Canton?

A. Yes, I had orders to meet engine 41.

Q. Did you stop for that?

A. No, sir.

Q. Where did you meet that train?

A. I met that train at Cuba.

Q. Now, after you arrived at Hamilton, did you take that train, or any part of it, to Keokuk, Iowa?

A. No, sir.

331 Q. Did you next morning?

A. Yes, sir.

Q. What did you take to Keokuk?

A. Well, we took some coal.

Q. Did you take this same locomotive?

A. Yes, sir.

Q. And any of the cars that you pulled to Hamilton, did you take those?

A. Yes, sir.

Q. What did you get at Keokuk?

A. We got some empty coal cars.

Q. Where did you take the empty coal cars?

A. We took some of them to Hamilton, and some of them to Cuba.

Q. On your return trip.

A. Return trip.

Q. Did anything occur on the return trip on January 1, 1942, on extra 43 east?

A. Yes, sir.

Q. What occurred?

A. I stopped for the P. & P. U. crossing, and we were rocked there.

Mr. Knoblock: I didn't get that.

(Answer read by reporter.)

Mr. Knoblock: This is on the way back?

A. Yes.

Q. Where is the P. & P. U. crossing?

A. Just below the depot about a block or so.

Q. Which depot?

A. Union Depot.

332 Q. Persimmon Street?

A. Yes.

Q. What happened there?

A. They rocked the cab again; nobody hurt.

Q. How many men were engaged in that?

A. It was dark. I couldn't see nobody.

Q. How many rocks were thrown?

A. Oh, a dozen or so.

Q. What time was it?

A. It was about 5:30.

Q. And did you have any windows in the cab at that time?

A. Very few.

Q. What did you have to protect you from the cold?

A. Nothing.

Q. Do you know how many cars or loads you pulled into the Peoria yard that night?

A. I think twenty-two loads, and seven empty, or twenty-three. I wouldn't say which.

Q. What happened at West Washington Street?

A. Well, at West Washington Street a guy tried to throw through the front window, but I didn't recognize him.

Q. What did he throw?

A. A rock.

Q. What?

A. A rock.

Q. Did you see it hit some place?

A. I heard it hit, yes.

Q. What did it hit?

A. It hit the front end of the cab somewhere.

333 Q. Now, did you proceed then to East Washington Street in East Peoria?

A. Yes.

Q. Anything happen there?

A. Another guy throwed at the cab, the front window.

Q. How far is it from the crossing on West Washington Street to the crossing on East Washington Street?

A. Oh, it must be two mile.

Q. How much?

A. Two mile.

Q. How far is it for the train to travel to get from one point to another?

A. Well, about the same distance, I would say.

Q. Parallel, or partly parallel?

A. Yes, sir.

Q. Now, was anyone on this train that day or the day before besides the conductor who received any injuries or was hit by any of these rocks?

A. Yes. Ernie Lawson was hit.

Q. How was he hit? What was the nature of it?

A. It hit him on the hip, but it didn't seem to hurt him any.

Q. What was it?

A. Brick.

Q. Where did that occur?

A. Down here at the bridge.



Q. Cedar Street bridge?

A. Yes.

Q. Was G. L. Underwood on the train that day?

A. Underwood?

334 Q. Who threw that brick that hit Lawson?

A. I couldn't say.

Q. You didn't see?

A. No.

Q. Do you know Ashburn?

A. No.

Q. Was there anyone else? That is Robert Ashburn. Was he on the train that day?

A. I couldn't say.

Q. Then when this train reached the Nickel Plate crossing and the viaduct over 151, was there anything occurred there?

A. Yes, there was a few stones throwed, but not bad.

Q. Did you notice the direction from which these stones were thrown?

A. They came from the north side, I think.

Q. Did you notice any men there?

A. No.

Q. Had you noticed men at that point before the stones were thrown?

A. No, I couldn't see from where I was at. Going in, I was on the wrong side of the engine. I couldn't see that side.

Q. When you went out the day before, you passed there?

A. Yes.

Q. Did you notice any men there?

A. Yes, sir.

Q. Where were they?

A. They were on the road crossing on half of the street there.

Q. Were those the pickets there?

A. Yes.

Q. When these stones were thrown on your way in, did they come from that direction?

335 A. Yes, sir.

Mr. Knoblock: I object. Oh, I will withdraw that.

Mr. Heyl: Cross examine!

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Ward, you say you live at 217 Arthur Street, Peoria, Ill.?

A. Yes, sir.

Q. And prior to this strike, you were a hostler, is that right?

A. Yes, sir.

Q. And now you are an engineer.

A. Yes, sir, I guess so.

Q. You have been doing an engineer's work, is that right?

A. Yes, sir.

Q. Are you one of the men that has been promised a \$10.00 a day extra bonus?

A. I wasn't promised by nobody, no.

Q. Did someone mention it to you?

A. Yes, sir.

Q. Who did that?

A. Some of the employees said we was getting it.

Mr. Heyl: I move to strike that as not binding upon the plaintiff.

The Court: Oh, I think it may stand.

Q. And, as a hostler, had you ever taken this run to Hamilton before?

A. No. I have firing, though.

Q. You have fired it?

A. Yes.

Q. How many years before?

336 A. Well, 1917, 1918, and I fired over there for Dick Flessner along in 1924 or 1925.

Q. Who is Dick Flessner?

A. He used to be an engineer on the T. P. & W.

Q. And you fired there in 1924 or 1925?

A. Somewhere along in there. I wouldn't say when, but I made a trip with him over the road not so long ago.

Q. What was the last time you were over this road? I mean prior to the occasion of your being an engineer.

A. Well, I was over there not long ago. I brought in a train with Verd Kirk from Canton. That was the last time I was over there.

Q. And when was that?

A. Well, I don't know.

Q. I am just trying to get an approximate date. Two, three or four months ago?

A. No, it has been a year or so ago.

Q. Outside of that one occasion, you haven't been over that road since about 1924 or 1925, is that right?

A. No, it was later than that.

Q. When?

A. I can't just recall the year.

Q. What is your best judgment?

A. Well, I would say 1927.

Q. 1927?

A. Yes, or 1937.

Q. Who were you with on that occasion?

A. Verd Kirk.

Q. You just went over it once on that occasion?

A. I went over to Canton and brought the train in.  
337 The fireman got sick.

Q. On the morning of December 31, 1941, you left the T. P. & W. yards at 7:30 A. M., is that right?

A. Somewhere around there, yes, sir.

Q. And you say that some stones struck the cab of the engine when you went under the viaduct, is that right?

A. Yes, sir.

Q. But you did not see anyone throw those stones?

A. No, sir.

Q. And how many stones were thrown on that occasion?

A. Oh, I couldn't tell.

Q. What is your best judgment?

A. There was hundreds of them.

Q. There were hundreds of them, is that right?

A. Yes. They followed me to Canton, and there certainly was.

Q. I am talking about this viaduct.

A. Oh, well, I don't know; a dozen or so.

Q. A dozen or so, and when you looked back there were only two men you saw? That was W. J. Christoff and Herman Siebenthal, the only two you saw?

A. Yes, sir.

\*Q. If there was a dozen stones hit you, those two gentlemen would have to throw six apiece?

Mr. Heyl: I object; argumentative.

The Court: Yes, it is argumentative.

Mr. Knoblock: All right!

Q. How much time would you say elapsed from the time you first noticed it until it was over?

A. Oh, I don't know; two or three, or a couple of minutes, anyhow.

338 Q. And you didn't turn to look where they were coming from during that entire period of two minutes?

A. No, sir.

Q. You did not? And at Washington Street crossing you saw Feuger and Reiman, is that right?

A. Yes, sir.

Q. And Feuger drew back the club, but he didn't throw it?

A. Mr. Feuger didn't.

Q. I mean Reiman didn't? I am wrong on the name.

A. That's right.

Q. What's that?

A. You're right now.

Q. And Feuger pointed his finger at you?

A. Yes, sir.

Q. Now, as you went on down south, then, you say you saw some men riding along in Jerry Underwood's car, is that right?

A. Yes, sir.

Q. Who were those men?

A. Well, he's the only one I could recognize in the car until they could get out.

Q. You don't know who was riding in the car until you got on down the road further, is that right?

A. Yes, sir.

Q. Where did you first recognize who they were?

A. Well, when I first recognized them riding in his car was, oh, down at the crossing just this side of Mapleton.

Q. That is what we call the Wheeler crossing?

A. Yes, sir.

Q. Now, as you got to Cedar Street—the first street  
339 the other side of Cedar Street—you claim that there is where you saw Gabbert throw a stone or something to break the headlight of the engine, is that right?

A. Yes, sir.

Q. Now, how was Gabbert dressed that day?

A. Well, I don't know. He had on kind of a dark suit. That is all I can tell you.

Q. How long have you known Gabbert?

A. Oh, for several years; ever since he worked—

Q. Do you know him pretty well?

A. Well, I am not chummy with him, just saw him working around there.

Q. You saw him working around there for several years?

A. Yes, sir.

Q. You would be able to identify him anywhere? .

A. I think so.

Q. And the man you saw in front of the engine that day you are positive was Gabbert?

A. Yes, sir.

Q. You didn't see anybody else in front of the engine when you claim Gabbert was there?

A. No, sir.

Q. Now, Lawson was along with you on that occasion, is that right?

A. Yes, sir.

Q. What is his first name?

A. Ernie.

Q. What is his position down at the T. P. & W.?

A. Huh?

Q. What is his position down there?

340. A. Well, he's a, oh, road foreman, roadmaster.

Q. You say that Underwood said to Lawson to get out of the way, that he wanted to kill you, is that right?

A. Yes, sir.

Q. He didn't do anything right there that would indicate he was going to carry it out, did he?

A. No, sir.

Q. He didn't come up and try to get in the cab, did he?

A. No.

Q. As far as you know, he never threw anything there?

A. I didn't see him throw.

Q. The only man you saw there was Gabbert at that crossing?

A. Yeah.

Q. When you brought your train to a stop at Hollis, the cab of your engine was where, now, from the telephone booth?

A. Well, I would say it was a couple of car lengths beyond.

Q. Beyond?

A. Beyond the little shanty.

Q. You mean south?

A. Maybe farther.

Q. How many feet would that be?

A. Oh, it would be about eighty feet.

Q. And who was in the cab at that time as you came to a stop there?

A. Well, the conductor and Lawson and I.

Q. The conductor, what was his name?

A. Carnarius.

Q. Lawson and you and anybody else?

A. Taylor, the fireman.

Q. Taylor, the fireman, and that is all?

341 A. Well, there was several others on there, but I don't know their names.

Q. There were several others? How many others were there?

A. I had a student fireman and a student brakeman. That was two more. That's all that I know of.

Q. There was no other people there but those you have mentioned here now?

A. No, sir.

Q. And you are sure of that?

A. Well, not positive, but that's all I know of.

Q. That's all you remember?

A. Yes.

Q. Don't you remember the guard that was carrying a gun there that day by the name of Kane?

A. Well, there was a guard on there, but I couldn't tell you his name.

Q. He was in the cab there with you, wasn't he?

A. Yes, I think he was.

Q. And he rode all the way from East Peoria to Hamilton with you there in the cab, didn't he?

A. Yes.

Q. And that man's name was Kane?

A. I didn't know his name.

Q. And he carried a gun, didn't he?

A. I couldn't swear to that.

Q. You couldn't?

A. No, sir.

Q. All right, but you knew he was a guard?

A. Yes, sir.

342 Q. Now, did anyone get out of the cab outside of Carnarius there at Hollis?

A. I couldn't say. I don't think they did.

Q. And where— How long was Carnarius gone when he left the cab?

A. Oh, I would say three or four minutes.



Q. And how long did you stop there?

A. Well, not any longer than he got back and told me to go. As soon as we could get started, we went.

Q. You started right out, is that right?

A. Yes.

Q. And as soon as he went down to the phone booth and made a call and he came back and got in the cab, you went on then toward the hard road crossing, the Wheeler crossing, down toward Canton?

A. Yes, sir.

Q. You say there was bricks thrown down there; but you did not see who threw them?

A. No.

Q. Did any of the people in the cab try to see who it was?

A. I couldn't say.

Q. You couldn't say?

A. No, sir.

Q. You didn't observe anybody in the cab try to observe who was doing it?

A. No, sir, I was busy.

Q. You were busy? Do you know where they were coming from down there that day?

A. They was coming between those cars.

Q. They were coming from between those cars, but 343 you did not see who threw them?

A. No, sir.

Q. What did the guard do while you were there?

A. Nothing.

Q. He stayed in the cab?

A. Stayed in the cab.

Q. Did anyone protest the action of the men that were throwing?

A. No, sir.

Q. Then you went on down, and where did you say that Underwood hit you with a brick?

A. On the Wheeler crossing.

Q. On the Wheeler crossing, and at the same time there was Gimming and Gabbert there also, is that right?

A. Yes, sir.

Q. Having completed that run, have you at any time ever complained to any public officials or authorities concerning that fact?

A. Nobody but my lawyer here.

Q. You told you lawyer about it?

A. Yes, sir.

Q. But you never told any law-enforcement officer or public official?

A. No, sir.

Q. And you have never asked any law-enforcement officer or public official to do anything about it?

A. No, sir.

Q. Going back in the day of January 1, 1942, you say on one or two occasions that evening there were some rocks thrown, but by whom you absolutely had no idea?

A. On what date?

344 Q. January 1, 1942.

A. No, I don't know who threw them.

Q. So on this trip the only men that you actually saw throw anything are Gabbert,—

A. Yes, sir.

Q. —Underwood,—

A. Yes, sir.

Q. —and Gimming?

A. Yes, sir.

Q. Those three?

A. That's the three.

Q. Are you a member of the B. of L. F. & E.?

A. I was.

Q. Did you vote for the strike?

A. Yes, sir.

Q. After these bricks and rocks that you mentioned running up, would you say, during the entire trip into two or three hundred?

A. Yes, altogether. Wait a minute. Not two or three hundred; a hundred, I said.

Q. A hundred?

A. Yes.

Q. That is all that you can recall having hit that cab from the time you first noticed it at the viaduct, and then at the Cedar Street crossing, then at Hollis and at the Wheeler crossing and at Canton, that entire trip back, and coming back this other way? About a hundred rocks is your estimation of what was thrown?

A. I would estimate it at that, yes.

Q. And the engine or train was not disabled so it could not be run, and completed its trip?

345 A. No.

Q. Is that right?

A. Yes.

Mr. Knoblock: I think that is all.

The Court: Anything further with this witness?

*Redirect Examination by Mr. Heyl.*

Q. What was the condition of the headlight on the trip back from Hamilton?

A. Well, it broke the light out and part of the reflector, the top part, but didn't break the bulb. When night come, I had light. Of course, it wasn't as good as if the whole reflector had been in there, but I still had a light.

Mr. Heyl: That's all.

The Court: That's all?

I expect we had better stop at this point.

Let me see you attorneys, if I may.

(Discussion off the record.)

Trial Adjourned at 5:10 o'clock P. M.

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January 10, 1942.

Trial Resumed at 10 o'clock A. M.

Appearances:

Same as before.

ERNEST ALFRED LAWSON, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Ernest Alfred Lawson.

Q. Where do you live, Mr. Lawson?

A. LaHarpe.

Q. Illinois?

A. That's right.

Q. And what is your business or occupation?

A. Roadmaster.

Q. How long have you been roadmaster?

A. Since September 1, 1937.

Q. And you have been constantly employed by the railroad since that?

A. That's right.

Q. How old are you?

A. Thirty-five.

Q. On December 29, 1941, were you on extra 43 west?

A. I was.

Q. I will ask you what, if anything, you observed as you approached the New Philadelphia hill on that railroad?

347 A. The rails were either greased or soaped or something.

Q. What happened?

A. Well, we were going up the hill at a very good rate of speed for that hill, and the train wasn't heavy. I would say we were going twenty miles an hour, and the engine wasn't working hard, and we hit a spot about ten rail lengths west of the crossing, and the engine flew up and I thought for a moment it wasn't going to catch itself. There must have been something wrong. After we got by that two rail lengths, we got up the hill.

Mr. Knoblock: I object to that two rails part. It is speculation on the witness's part.

Q. Where were you riding?

A. Behind the engineer on the west hand side.

Q. You have ridden on engines during the course of your employment?

A. That's right.

Q. And on that day did you observe the distance that the engine experienced this difficulty?

A. Well, I would say it was three rail lengths before it caught itself.

Q. And was there any other place on the railroad that day that you observed this movement of the engine?

A. No, sir.

Q. Mr. Lawson, from your experience as a railroad man, do you have an opinion as to what would have been the result in this condition of the rails if the engine had been traveling at a high rate of speed?

Mr. Knoblock: I wish to object to that.

The Court: I think the objection ought to be sustained.

I haven't seen any qualification of this man.

348 Q. How long have you been working at your present employment?

A. You mean as a track man?

Q. Yes, sir.

A. Fourteen years, nine months and eight days.

Q. During that period of time, have you had experience in railroads in observing the movement of locomotives on smooth tracks?

A. I have.

Q. Or on greased or soaped tracks?

A. That's right.

Q. And how much of the time have you ridden on locomotives in the performance of your duties as a track man?

A. Off and on ever since I have been there.

Q. And, from that experience, are you able to determine the cause of the slipping of the engine and the wheels on the tracks?

A. Well, I have my idea of it.

The Court: That isn't the question. Have you observed it?

Q. Have you observed it?

A. Yes.

Q. And, from that observation and experience, are you able to determine what is the cause of the sliding of the wheels on a track?

A. Yes, sir.

Q. And did you— Have you an opinion, based upon your knowledge and experience and the observation that you made of this engine on the day in question, as to what caused the sliding of that engine at that New Philadelphia place you have indicated?

A. Yes.

Q. What is your opinion?

349 Mr. Knoblock: I object to that.

The Court: I think he may answer. It is an opinion.

A. From the speed it was traveling and no harder than it was working, it is very evident to me the rail was soaped or greased, or something was on the rail.

Q. That kind of substance?

A. That's right.

Q. Have you an opinion, based upon your experience and observation that day of the movement of that engine, what the result would have been if that engine had been pulling a heavy load and traveling at a higher rate of speed than you have indicated?

Mr. Knoblock: We object to that.

The Court: I think he may answer.

A. The drivers might have derailed the engine.

Mr. Knoblock: Move it be stricken.

The Court: Yes, I think it may. He is asking for an opinion.

Q. What would have happened, in your opinion?

A. It would have derailed.

Q. Derailed what?

A. The engine.

Q. Now, were you on extra 43 west on December 31, and extra 43 east on January 1, 1942?

A. I was.

Q. In what capacity?

A. Well, pilot I think you would call it.

Q. What is a pilot? What is the meaning of that?

A. He's the man that shows you over the road and keeps you out of trouble, and how to go through the interlocking—

350 Q. What is it?

A. The junction points where you cross other railroads.

Q. Where does the pilot ride on the train?

A. I rode behind the engineer.

Q. Is that the usual place?

A. Yes, sir.

Q. That is where you rode?

A. That's right.

Q. Now, at the Nickel Plate crossing in East Peoria, when this train was returning to East Peoria on January 1, 1942, did you observe any of the defendants throwing stones at the train?

A. As we were returning?

Q. Was it returning or going out?

A. Going out.

Q. That is on the 31st, '41?

A. That's right.

Q. Will you tell me the names of the defendants whom you observed throwing stones at that point?

A. At that one point? Bill Christoff.

Q. W. J. Christoff?

A. That's right.

Q. Did you see G. L. Underwood there?

A. I did not.

Q. Did you see any of the rest of the men?

A. There were more there.

Q. Did you recognize them either by name or by appearance as former employees of the railroad?



A. Well, yes and no. I saw their faces, but I am not sure.

Q. Now, did you have any experience at Swords' crossing or Swords' Siding, rather, in East Peoria?

A. We did.

Q. Did you recognize any of the ones there that threw stones?

A. Christoff and Jerry Underwood.

Q. G. L. Underwood?

A. Yes.

Q. And at the Cedar Street bridge what happened?

A. We were stoned, but I didn't get a chance to see any of them.

Q. What was the extent there?

A. The question again, please.

Mr. Heyl: I will withdraw it, and ask another question.

Q. What was the extent of the stoning of the train at that point?

A. Well, I would say there were twelve or fifteen stones.

Q. Was anyone hit?

A. I believe not.

Q. Now, were you at Persimmon<sup>e</sup> Street? Did anything happen there?

A. Not going out on the 31<sup>st</sup>.

Q. At Hollis?

A. Yes.

Q. What happened there?

A. We stopped to sign the train register, and we were stoned.

Q. Anybody hit?

A. Yes.

Q. Who was hit?

A. Carnarius was hit in the mouth.

Q. You saw that, did you?

A. I did.

Q. Did you observe the persons that were throwing 352 stones or bricks at the train?

A. The only ones that I saw was Christoff and Underwood.

Q. Were they there at that point?

A. They were.

Q. Now, at Wheeler crossing between Hollis and Mapleton, or at the Pekin road, did you observe anything at the Pekin road?

A. I did.

Q. What did you observe there?

A. We were again stoned by Underwood and Christoff, and I took it to be Reiman, but I am not positive. He was a little fellow, and I would like to withdraw that because I am not positive of that. I was concentrating on Underwood.

Q. Where were these men?

A. Underwood was standing at the—on the right hand side of the engine at the west side of the slab, so close I thought we were going to hit him. He wasn't over eighteen inches from the cylinder, I don't believe.

Q. That was where?

A. At the Wheeler crossing.

Q. What did he do there?

A. He threw a brick through the small glass in the front of the cab. It's about eight inches by nine and a half, and hit Larry Ward, the engineer.

Q. What happened to Ward?

A. He just kind of sagged at the knees and leaned forward, and I asked him if I should shut it off, got the throttle in one hand and put the other under him, and he sagged between the boiler and the side of the cab. He couldn't say anything. I asked him if I should shut it off, and he 353 didn't say anything, and I waited a minute and said, "Larry, shall I shut her off?" and he shook his head like that, (demonstrating), and the engine drifted along.

Q. How long did the engine run without the engineer handling the throttle? How long did it run?

A. I would say a minute and a half.

Q. Now, what part of his body was hit? You saw what happened?

A. It looked to me as though he was hit in the groin (it was a whole brick), and maybe with the other end of it in the short ribs.

Q. What happened to the brick? Did you see it?

A. I did.

Q. Where was it?

A. In the cab.

Q. Now, who threw that brick?

A. Gerald Underwood.

Q. That is one of the defendants in this case?

A. That's right.

Q. Were any of the other persons, one of the other defendants, present at that time?

A. Christoff is the only one that I can identify.

Q. W. J. Christoff?

A. That's right.

Q. What happened at Glasford?

A. We were stoned.

Q. Did you see the persons there that threw the stones?

A. I was on the opposite side of the cab. I saw no one.

Q. That is, that was from which side of the cab you were stoned?

A. We were stoned from the left side of the cab.

354 Q. Where were you riding?

A. I was riding behind the engineer on the right side.

Q. Now, what happened at Canton?

A. Were stoned again.

Q. Did you see any of the persons there?

A. I did not.

Q. What was the extent of it?

A. I would say twenty stones or bricks.

Q. What part of the train did they strike?

A. The engine; the cab.

Q. Where were you?

A. Behind the engineer.

Q. Did you stop at Canton?

A. We stopped for the crossing.

Q. You mean after you got past the crossing?

A. We did not.

Q. The next stop was at Bushnell?

A. Cuba.

Q. Did anything happen between Canton and Cuba?

A. Nothing.

Q. Or beyond Cuba?

A. Nothing.

Q. You returned to Peoria on January 4, 1942, I believe?

A. That's right.

Q. Did anything happen on that trip? The return trip?

A. We were stoned at the crossing (I believe Persimmon Street) coming in.

Q. Did you see the men that stoned the train?

355 A. I did not.

Q. Where were you riding?

A. Behind the engineer.

Q. What was the condition of the windows in the cab and the headlight?

A. They were broken out. The headlight was also broken out, and part of the window frames were broken out.

Q. Did you see the headlight broken out on that locomotive?

A. I did.

Q. Where did that happen?

A. At Cedar Street.

Q. When?

A. Going out the 31st.

Q. Did you see the person that threw the brick?

A. I did, but I couldn't recognize who it was.

Q. Couldn't identify him?

A. No, sir.

Q. That was in the daytime, was it?

A. That's right.

Q. Was there anything happened after you left Persimmon Street on your way to the yard in East Peoria?

A. Nothing.

Q. Did you recognize any of the persons at the various incidents you have referred to as employees, former employees, of the T. P. & W.?

A. I did.

Q. Is that true in each case?

A. That's right.

Q. Do you know C. S. Gabbert?

356 A. I do.

Q. Is he in the court room?

A. I don't see him.

Mr. Heyl: All right. Cross-examine.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Lawson, how long have you lived at LaHarpe?

A. Five years.

Q. And how long have you been employed by the T. P. & W.?

A. Fourteen years, nine months and eight days.

Q. Where did you live before you went to LaHarpe?

A. Mapleton.

Q. Now, on December 29, 1941, did I understand that you were on what is known as extra 43 west? Is that right?

A. No, that isn't right.

Q. What? December 29, 1941, you were on what is known as extra 43 west?

A. You said "41 west", didn't you?

Q. 43.

A. Yes, that's right.

Q. Then you spoke something about the New Philadelphia hill. Where is that?

A. You want the mile post? Our mile post?

Q. No, I would like to identify it in a different manner than that. Is it near Peoria, or where is it?

A. No, it's about two and a half miles east of New Philadelphia.

Q. What county is that in?

A. Fulton, I believe.

Q. And what other city is near there besides New Philadelphia?

357 A. Marietta, Smithfield, Seville, Bushnell.

Q. Now, at that time when you were riding in that cab, you say Larry Ward that day was the engineer?

A. That's right.

Q. You were the pilot?

A. That's right.

Q. Who was the fireman?

A. Taylor.

Q. What is Taylor's first name?

A. They call him Bert. I don't know whether that is his full name or not.

Q. Bert Taylor?

A. That's right.

Q. Do you know where he lives?

A. Hamilton.

Q. Was he riding on the train that same day that you were?

A. He was.

Q. He was riding in the cab of the engine when you struck New Philadelphia hill?

A. That's right. No.

Mr. Heyl: What is it?

A. That isn't right.

Mr. Heyl: Then make it right.

A. Ed Tucker was fireman.

Q. Tucker was?

A. That's right.

Q. You say — What is Tucker's first name?

A. Ed is all I knew him by.

Q. And who else was in the cab there with you?

358 A. A special agent from Bushnell by the name of Kane, Bill Kane.

Q. Does Bill Kane live at Bushnell?

A. Yes.

Q. He does?

A. He does.

Q. All right! Who else?

A. That's all I can recall.

Q. There was some others in there, wasn't there?

A. Yes, I am sure there was.

Q. How many were there, in there, altogether?

A. About six.

Q. How long has Kane lived in Bushnell?

A. I couldn't tell you.

Q. Kane was not a special agent before this date of December 29 for the T. P. & W., was he?

A. I couldn't tell you.

Q. Do you know who hired Kane?

Mr. Heyl: I object to that as immaterial.

The Court: Yes, I think it is.

Q. Now, Kane was armed that day, wasn't he?

A. I never saw any arms at all.

Q. You never saw him carrying any gun at all?

A. I did not.

Q. And you were with Kane all the way over to Hamilton and Keokuk, Iowa, and back? He came back with you, didn't he?

A. He didn't ride the engine back.

Q. He rode the caboose back?

A. Yes.

Q. And another special agent took the engine?

359 A. Yes.

Q. What was his name?

A. I don't know.

Q. Now, with reference to this New Philadelphia hill, how fast were you going when you struck that hill?

A. I would say twenty miles an hour.

Q. And you at no time ever inspected the tracks or the rails there, did you?

A. Before we hit them?

Q. Yes.

A. No.

Q. You never inspected them afterwards, did you?

A. No.

Q. And you haven't even inspected them to this day, have you?

A. No.



Q. If they had been greased or soaped rails on your way back, you could have inspected them, and there still would have been evidence of that there, wouldn't there?

A. I doubt it.

Q. You doubt it?

A. I do.

Q. Had it rained in the meantime?

A. There had been several wheels over them.

Q. Wouldn't there have been some evidence of greasing or soaping those rails?

A. It depends on how much is put on.

Q. I see. How many other times in your experience have you had greased or soaped rails?

A. I can't remember any under these circumstances.

360. Q. This is the first time you can ever recall of having greased and soaped tracks?

A. Oh, no. On Ys and tracks we have greased, but none that weren't supposed to be greased.

Q. You say the engine flew up, as I understood you to testify. What do you mean by that?

A. The drivers started spinning.

Q. And continued for a distance of how long?

A. About three rail lengths.

Q. When you got to Hamilton or Keokuk, did you notify the Peoria office of that condition?

A. No, sir.

Q. You didn't regard it important enough to notify any other trains going over the location of that condition?

Mr. Elliott: I object to that as improper.

The Court: I think he may answer.

A. Answer?

The Court: Yes, answer.

A. No, because the next train over, nothing would probably happen. The wheels had taken the soap off.

Q. I see. You say if the engine had been going any faster it might have derailed. That's just a guess on your part, isn't it?

A. That's right, a matter of opinion.

Q. Is it an opinion or guess?

A. It's an opinion.

Q. You don't know how much faster a train would have to be going to cause that result, would you?

A. How much harder it was pulling would make a difference.

Q. You don't know how many cars that would take?

361 A. No.

Q. And on this particular morning had it been snowing any?

A. I believe not.

Q. Does snow or frost on the rails make any difference sometimes?

A. It does.

Q. It was cold weather, wasn't it?

A. It was.

Q. And the rails might well have been pretty frosty that morning?

A. It seems that there would have been frost all the way up the hill instead of the three rails.

Q. You don't think the frost would have anything to do with it that morning?

A. I do.

Q. If they were greased or anything of that kind, you don't know who did it?

A. No.

Q. You never took the occasion to inspect them there to see if that were actually the case?

A. No.

Q. At the Smithfield hill you have an automatic greaser there, haven't you?

A. Not now.

Q. You did have?

A. That's right.

Q. And trains always go up that at high speed, and never derail?

A. Not at high speed.

Q. They go twenty miles an hour?

A. Yes, sometimes.

Q. That's what you say you were going here?

362 A. That's right.

Q. And you considered that a high speed here, didn't you?

A. That's right.

Q. And going twenty miles an hour where this automatic greaser is on Smithfield hill?

A. No, but engineers are looking for something like that when he is pulling hard.

Q. It doesn't make any difference whether you are looking for it or not, if you have the same number of cars

and are going the same rate of speed? Wouldn't that be true?

A. I think not.

Q. Just the fact you were looking for it would make a difference?

A. It would.

Q. Now, on extra 43 west December 31 and extra 43 east January 1, you were acting on both of those trains as pilot?

A. That's right.

Q. You had armed men on both of those trains, too, did you?

A. Not to my knowledge.

Q. You say you had special agents there?

A. That's right.

Q. Were they unarmed?

A. I couldn't say.

Mr. Heyl: He has answered that two or three times.

The Court: I thought he had.

Q. At the Nickel Plate crossing in East Peoria, on December 31, 1941, you were riding in the cab as pilot?

A. I was.

Q. And you say you saw Bill Christoff there?

A. That's right.

363 Q. Where did you see him?

A. Standing just west of the viaduct about fifty foot.

Q. What time of day was it?

A. 9:30, something like that; close.

Q. Was there anybody else with him?

A. I didn't recognize anybody else.

Q. And who was the engineer on that train?

A. Larry Ward.

Q. It's a fact Ward thumbed his nose at Christoff there?

A. I didn't see him.

Q. And some of you fellows were yelling out at the men, "Suckers"?

A. I didn't hear it.

Q. That's a fact, isn't it?

A. No, it isn't.

Q. Now, at Swords' Siding you say again you saw Christoff and Underwood?

A. That's right.

Q. Did you see Larry Ward shake his fist out the window and yell, "Sucker"?

A. I was carrying on a conversation with Christoff, I did not.

Q. You were carrying on that conversation with Christoff? Sort of a heated conversation, wasn't it?

A. It was not.

Q. Very pleasant?

A. Well, I wouldn't say "pleasant".

Q. I see. Some pretty hot words were going back and forth, isn't that right?

A. Not on my part.

Q. Not on your part?

364 A. I couldn't hear all that Bill said.

Q. Now, at the Cedar Street crossing you don't know who was there at all, do you?

A. I do not.

Q. At Hollis you saw Christoff and Underwood there?

A. That's right.

Q. They were the only two that you saw there?

A. The only two that I saw.

Q. You didn't see any of the fellows in the cab thumb their noses at them there?

A. No, I didn't.

Q. You didn't do it yourself, of course?

A. No, I didn't.

Q. On the Pekin road the only two you saw again were Underwood and Christoff?

A. At Wheeler crossing?

-Q. Pekin road.

A. I saw no one at Pekin road.

Q. You saw no one there? At the Wheeler crossing, the only two you saw were Underwood and Christoff?

A. There were more there, but those were the only two I recognized.

Q. The only two you recognized, is that right?

A. That's right.

Q. And at Glasford you didn't see anybody there?

A. I did not.

Q. At Canton you didn't see anybody there, either?

A. No, sir.

Q. Are you one of the men that has been promised a \$10.00 bonus in case this thing goes through?

365 A. Not to my knowledge.

Q. Not to your knowledge? Have you heard any talk about it?

Mr. Heyl: I object to that as not proper cross-examination.

The Court: A \$10.00 bill if this case goes through?

Mr. Knoblock: \$10.00 a day bonus.

The Court: \$10.00 a day for working? He may answer. He has answered.

Mr. Heyl: He answered that.

The Court: All right! Go ahead!

Q. Now, on December 31, 1941, at Cedar Street where you say the headlight was broken, you don't know who did that?

A. I don't.

Q. Do you know Gabbert?

A. I do.

Q. Well, it wasn't him, then, was it?

A. It could have been, but I am not saying it was. I saw the man throw the rock, but that is all. I just saw his arm go up and throw the rock. I didn't recognize him.

Q. You didn't recognize him?

A. I did not.

Q. You know Gabbert pretty well?

A. I do.

Q. Don't you think, if it had been Gabbert, as well as you know him you would have recognized him?

A. I would have if I could have seen him.

Q. But you didn't see him? Just saw him raise his arm?

A. That's all. Just saw the man throw.

Q. Now, directing your attention, Lawson, to Hol-366 lis, where was the train brought to a stop there?

A. I would say three car lengths west of our switch at the crossing of the P. T.

Q. That was the engine?

A. That's right, the engine.

Q. Now, who left the cab there?

A. Carnarius.

Q. Anyone else?

A. I don't remember.

Q. You say you saw Underwood and Christoff there?

A. That's right.

Q. On which side of the engine were they?

A. On the right hand, the west side of the engine.

Q. Where were they standing?

A. Between two cars.

Q. And how many rocks were thrown there?

A. Twenty-five or thirty.

Q. Twenty-five or thirty? And when? How long was Mr. Carnarius gone?

A. Five minutes, I would say.

Q. And when he returned, did you start toward the Pekin road?

A. Well, the air kind of stuck a little bit. We had just a little bit of trouble getting started, but we did. We left as soon as we could.

Q. And, as I understand it, the engineer is on the right front of the cab, is that right?

A. That's right.

Q. And you were behind him?

A. That's right.

367 Q. Now, where were the other men stationed in that cab?

A. We had a man from LaHarpe by the name of Reed.

Q. By the name of what?

A. Reed, sitting on the head brakeman's seat.

Q. Which side of the cab is that?

A. Left side.

Q. That's on the left side?

A. That's on the left side; and the special agent was sitting behind him.

Q. Sitting behind him on the left side?

A. That's right; and the fireman was standing in the gangway in the middle,—

Q. Was standing in the middle?

A. —and that is all I can tell you about it.

Q. Where was Carnarius when he came back? Where did he place himself?

A. I couldn't say.

Q. Do you know where he was standing?

A. No, I don't.

Q. When two men are on the side of a train like you and Ward were on the right side, and where the fireman and special agent were on the left side, you take most of the space on that side of the cab?

A. The fireman wasn't on the left side.

Q. Which side was he on?

A. He was in the middle.

Q. He was in the middle?

A. That's right.

Q. A man from LaHarpe, you say, was on the left front?



368 A. That's right.

Q. And sitting behind him was the special agent, and that takes up most of the space on that side of the cab doesn't it?

A. Yes, most of it.

Q. And the same thing would be true of the right side when you and Ward were in your positions?

A. Yes.

Q. And the same thing would be true in the middle?

A. No.

Q. It would not?

A. It would not.

Q. When Carnarius got off and came back, he got off and came back both times on the left side of the train, didn't he?

A. He did.

Q. And were stones being thrown at the train while Carnarius was gone?

A. There were.

Q. How many would you say were thrown at the cab while he was gone?

A. A dozen.

Mr. Knoblock: I think that's all.

Mr. Heyl: I want to ask one or two questions.

*Redirect Examination by Mr. Heyl.*

Q. What is the length of a rail?

A. If you are referring to the one on Smithfield hill, thirty-one foot.

Q. And the total length of this sliding would be about ninety-three feet?

369 A. Ninety-three, that's right.

Q. Now, you were asked with reference to the automatic grease machine at Smithfield,—

A. That's right.

Q. —is that the place? What is the purpose of that machine? What part of the equipment is greased?

A. The flanges.

Q. Where is the flange?

A. It's the side of the wheel that holds it on the rail.

Q. And does that machine put any grease on the face of the rail, or the top of the rail?

A. It doesn't, unless it is working entirely too hard.

Q. And does the grease on the flanges have any effect upon the sliding of the wheels?

A. Very little.

Q. Now, you referred to a conversation with Christoff at the Swords' Siding. Will you tell the court what Christoff said to you, in words or in substance?

A. Well, Christoff merely asked me to get out of the engine. I didn't take it that Christoff was tough at me at all.

Q. What else did he say?

A. Well, there was so much going on around there I really can't tell you.

Q. What did he say about you getting out of the engine?

A. He said I would get hurt if I didn't get out.

Q. What did you say to him?

A. I said I wasn't sent out there to get out of the engine, and I wasn't getting out.

Q. Did you see Ashburn on either of these runs? A  
370 man by the name of R. T. Ashburn?

A. He was head brakeman.

Q. What's that?

A. He was head brakeman.

Q. Did you see him?

A. That's right.

Q. In any of these stoning incidents that occurred?

A. That's right.

Q. Did you observe whether or not he got hit?

A. I did not.

Q. You didn't?

A. No.

Mr. Heyl: I guess that's all.

The Court: Is that all?

Call the next witness.

371 CLARENCE HARVEY, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Clarence Harvey.

Q. How old are you?

A. Twenty-two.

Q. Where do you live?

A. 318 Cole Street, East Peoria.

Q. What is your business or occupation?

A. I work for the T. P. & W., traffic department.

Q. How long have you worked for the T. P. & W.?

A. About two and a half years.

Q. And in what capacities have you been employed?

A. Well, I started first as a freight trucker, and I was O. S. & D. clerk and assistant accountant, and I am the traffic clerk.

Q. What is the O. S. & D. department?

A. Over, shorts and damages.

Q. On December 31, 1941, did you have anything to do with the operation of extra train 43 west?

A. I went along on the caboose as one of the helpers to show the conductor how to make out his forms.

Q. Did you ride the entire distance that that train traveled that day?

A. Yes.

Q. I will ask you if you observed on that trip any stoning of the train.

A. Yes, we did.

372 Q. At what point or points?

A. Well, the first point that I remember was under the viaduct in East Peoria, and the next was at East Washington Street crossing, and after we crossed the bridge down there by Persimmon Street, and then all the way to Canton there were three car loads of pickets that followed.

Q. You mean from that point on to Canton? Is that what you mean by "all the way to Canton"?

A. At every cross road or junction where there was a crossing.

Q. What did you observe there at each of those places?

A. There was fellows standing out there, and they throws stones at the caboose and the engine as we drove past.

Q. Did you recognize any of the men that you saw at these various points?

A. No, I am not acquainted with anyone of them.

Q. Can you recognize them as former employees?

A. No, I couldn't.

Q. Were they or not the same men at the various crossings?

A. We could tell by the cars.

Q. Did you observe the cars?

A. Yes.

Q. What kind of cars were they?

A. One was a '41 Pontiac, and I think one was a '36 Oldsmobile, and one was a coupe.

Q. There were three cars?

A. There were three cars.

Q. How many times did you see these cars at the various crossings between Peoria and Canton?

A. I can't remember the number of times, but we could see the cars following the train at every crossing.

Q. Does this railroad parallel the road between Peoria and Canton?

A. Part of the way, yes.

Q. What damage, if any, did you observe to the train?

A. You mean to the caboose where I was?

Q. Yes, to what part of it.

A. There was only two windows that was left in the caboose by the time we got to Hamilton, and it knocked out several window frames.

Q. Was the caboose in normal condition when you left the yards?

A. Yes, it was.

Q. The lights all in?

A. Yes.

Q. And you rode in the caboose all the way, did you?

A. All the way.

Q. Did any of the bricks or stones come into the caboose?

A. Yes, several of them.

Q. Will you describe them to the court, as to what they were?

A. They were large stones, most of them, and half of brickbats.

Q. Now, on the return on January 1, 1942, you left Hamilton at what time?

A. Well, it was—on the return trip it was about 10 o'clock, I imagine.

Q. That train was known as extra 43 east, wasn't it?

A. Extra 43 east, yes, sir.

Q. Did anything occur on the way home?

A. Not until we got to Peoria.

Q. What occurred from that time on until you reached the yards in East Peoria?

374 A. We had one stoning in Peoria, and two in East Peoria.

Q. On the way out the day before, did you see the breaking of the headlight?

A. No, I didn't.

Q. Did you observe the headlight after you got to Hamilton?

A. Yes.

Q. What did you observe?

A. The lens was broken out.

Q. Was the headlight of the locomotive intact before you started out?

A. Yes, it was.

Q. Was there any portion that train broken before you started?

A. Not that I noticed.

Q. Do you recall what the character of the load was as you went into Keokuk, Iowa, on the morning of January 1, 1942?

A. No, I don't.

Q. Do you know what the cars were, or did you pay any attention?

A. I didn't pay much attention. There were empties and several loads.

Q. You did take several cars from Hamilton, Illinois, into Iowa?

A. Hamilton, Illinois, into Iowa?

Q. Yes.

A. No.

Q. What did you take into Iowa from Hamilton?

A. I couldn't rightly say.

Q. Was there anything besides the caboose and the engine?

A. No, I believe it was just the caboose.

Q. What did you take out? Do you know, or did you pay any attention to that?

375 A. No, I didn't.

Q. Who was the conductor?

A. Mr. Carnarius, Clarence Carnarius.

Mr. Heyl: That's all.

*Cross-Examination by Mr. Knoblock.*

Q. You live at 318 Coale Street, East Peoria?

A. That's right.

Q. How long have you lived in East Peoria?

A. In East Peoria about ten or twelve years.

Q. Ten or twelve years, and you have been with the

T. P. & W. for two and one-half years, is that right?

A. Yes.

Q. What type of work did you say you first did when you went in there?

A. Freight trucker.

Q. Prior to this strike, what type of work were you doing?

A. Traffic clerk.

Q. Traffic clerk, you say?

A. Yes, sir.

Q. What is the nature of your duties as traffic clerk?

A. Well, it is mostly filing statements and tariffs.

Q. What's that, again?

A. It is mostly a job of filing statements and tariffs and learning rates.

Mr. Knoblock: Will you read that?

(Answer read by reporter.)

Q. When were you first notified that you were to go on this extra 43 west?

376 A. December 30.

Q. And who so notified you?

A. Mr. Slater.

Q. Who is he?

A. Chief clerk.

Q. And on this trip that you took on December 31, 1941, who all was in the caboose on that trip?

A. Well, there was myself and Fred Kinney.

Q. Who is Fred Kinney? Who is he?

A. He went along with me.

Q. Is he a T. P. & W. employee?

A. Yes.

Q. What is his work?

A. Same as myself.

Q. Fred Kinney, and who else?

A. There was Mr. Carnarius.

Q. Did he ride in the caboose all the way?

A. No, he rode in the caboose part of the way.



Q. What portion of the way did he ride in the caboose?  
Tell what portion.

A. Sometimes when we stopped he would get out.

Q. Starting from East Peoria?

A. I couldn't remember the exact points.

Q. You can give us some idea.

A. He rode the caboose to Hollis,—

Q. He rode the caboose to Hollis?

A. —and then he got on the head end.

Q. And there he got on the head end, is that right?

A. Yes.

377 Q. Did he come back and get in the caboose any other time until you got to Hamilton?

A. I believe at Canton he got in the caboose.

Q. At Canton he got back on the caboose?

A. Yes.

Q. Did you stop the train at Canton when he came back and got on the caboose?

A. No, the train wasn't stopped at Canton.

Q. He got off and flipped back on? Is that where he got in the caboose?

A. It was Canton or Cuba, I am not just sure.

Q. You are not just sure which it was?

A. No.

Q. How long did you stop at Hollis?

A. I don't remember.

Q. You don't remember? Would you say it was as much as five minutes?

A. I couldn't say.

Q. Well, it was long enough for Mr. Carnarius to walk from the caboose to the front of the train, is that right?

A. Yes.

Q. Is that right?

A. Yes.

Q. And Carnarius, Kinney and yourself—

A. There was Owen, the rear brakeman.

Q. Who?

A. Owen. That was his last name.

Q. And anybody else?

A. There was one special agent.

378 Q. What was his name?

A. I can't recall his name right now.

Q. Do you know where he came from?

A. No, I don't?

Q. He was armed, wasn't he?

A. Yes, he had a pistol.

Q. Do you know what calibre?

A. 38.

Q. It was loaded, wasn't it?

A. I don't know. I suppose it was.

Q. Now, you don't know who any of the men were that you saw either on December 31 or January 1, do you?

A. No; I have no idea.

Q. You couldn't recognize any of them, could you?

A. No.

Mr. Knoblock: I think that is all.

379 BORIS J. GLAVASH, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Boris J. Glavash.

Mr. Knoblock: How do you spell the last name?

A. G-l-a-v-a-s-h.

Q. What is your place of residence?

A. 215 Kettelle Street, Peoria.

Q. And your business or occupation?

A. Maintenance clerk in the superintendent's office.

Q. How old are you?

A. Twenty-three.

Q. How long have you worked at the T. P. & W.?

A. About five years and eight months; I believe it is.

Q. In what capacity or capacities?

A. As stenographer-clerk, and then about two years ago I was made maintenance clerk.

Q. And on December 31, 1941, did you assist in the operation of any train or engine?

A. No, sir.

Q. Were you on any train or engine?

A. Yes, sir.

Q. What train or engine?

A. On a yard engine which—I got on the yard engine at the east end of the Franklin Street bridge and rode down to the Union Depot.

380 Q. And do you remember the number of the engine?

A. Well, it was a 70 engine, but I don't recall.

- Q. Is that the type of engine, 70 engine?
- A. Yes, sir. It's a class of engine.
- Q. What was that engine pulling? Was it operating a train?
- A. It was delivering some cars over to Peoria.
- Q. That was a switching operation, was it?
- A. Yes, sir.
- Q. Where were the cars to be placed in Peoria?
- A. I don't know for sure because I didn't have any access to the switch list that the conductor had—that the foreman had.
- Q. Were they empties?
- A. I don't know.
- Q. How many cars?
- A. Well, I didn't count them, but I couldn't say for sure.
- Q. How did you happen to get on the engine at that point?
- A. Merely to ride back over to the Union Depot.
- Q. What did you observe when you arrived at the point where this engine was stopping on West Washington Street near the bridge?
- A. All that I saw, there was a crowd of people around there.
- Q. Did you see them doing anything?
- A. No, they were spectators, people that had gone along the highway, and were looking at the engine.
- Q. Did you observe anything with reference to the engine?
- A. You mean damage to the engine?
- Q. Yes.
- A. Well, no. I believe there was some windows broken out, but that's as far as I saw.
- Q. That's what I am asking you about.
- 3801 A. Yes, I saw the windows broken out of the engine.
- Q. Did you see any former employes of the road there?
- A. No, I got there after it happened.
- Q. Who was the engineer?
- A. What engine? Thielbert.
- Mr. Knoblock: What is that?
- Mr. Elliott: Fred Thielbert, T-h-i-e-l-b-e-r-t.
- Q. Did you see the engineer?
- A. Yes, sir.

Q. Where was he?

A. He was standing on the ground when I got there.

Q. Did you ride on this engine across the river?

A. Yes, sir.

Q. Did you observe anything after the engine started on its way across the river?

A. No, sir. What do you mean by "anything"?

Q. Anything happen out of the ordinary along there?

A. No, sir.

Q. Did you see any automobiles stopped at the crossing?

A. Well, just for the train as it was passing the crossing.

Q. Anything happen on the way over?

A. No, sir.

Q. Who rode on the engine besides yourself?

A. Well, I don't know who was on the inside in the cab of the locomotive except Mr. Thielbert. I think he continued as an engineer, but I was riding on the front footboard by Herschel Thompson and Mr. McNear.

Q. Were also there?

A. On the footboard with me, yes.

381 Q. Where did you leave the engine after you got across the river?

A. I rode on down to a point about a block and a half below the Union Depot.

Q. Did you observe anything at the Union Depot?

A. No, sir.

Q. When the engine stopped at that point, you left it, did you?

A. Yes, sir.

Q. Is that where the cars were left?

A. Yes, they left the cars there.

Q. Is that the C. B. & Q. yards?

A. Well, I think that is where we leave the C. B. & Q. cars for delivery to them, although I am not sure about that particular spot for delivery.

Q. I will ask you if you recall being in the lane leading to the property of the plaintiff on January 1, 1942, about 11:30 P. M.

A. Yes, sir.

Q. Who was with you?

A. Carroll Payne.

Q. Who is Carroll Payne?

A. He's the transportation clerk in the superintendent's office.

Q. How were you traveling?

A. In my automobile.

Q. And were you driving?

A. Yes, sir.

Q. Were you on your way home?

A. Yes, sir.

Q. What happened?

A. Well, nothing happened. We just drove up to the end of the lane, and there were a few men standing  
382 in the lane, so I stopped and I rolled the window to talk with them, and they asked us a few questions, and we went on,

Q. What did they say to you?

A. Well, they looked in the back seat first to see if we had anybody in the car with us and we did not, and they warned Payne to stay off of the locomotives.

Q. What did they say to you?

A. They didn't say anything to me.

Q. What did they say when they warned him? How did they warn him? Can you tell us what they said, or the substance of it?

A. Well, they just told him to stay off a locomotive, inasmuch as that was a place for a switchman.

Q. Who were these men you saw there at the time?

A. I recognized Clarence Gabbert and Delmar Newdigate.

Q. Anyone else?

A. There was another man whose face is familiar at the time. I didn't recall his name at the time. I understood later his name was McMullen.

Q. Walter McMullen?

A. Yes, sir.

Q. You recognized him as a former employee of the road, did you?

A. Yes, sir.

Q. About how many men were there altogether?

A. Well, I would say there were at least ten or twelve, and possibly a few more.

Q. Will you tell us just where they were when you drove up to the end of the lane?

A. There were about five or six men standing blocking the roadway, and there were also a few men to the

383 left of the roadway, and they stopped us and we talked with them then.

Q. How did they stop you?

A. They didn't stop me. They just stood in the lane.

Q. You had to stop to keep from running over them?

A. I had to stop for the highway, and they asked us a few questions.

Q. Did you observe whether or not they had anything in their hands? Any of them?

A. No, I didn't.

Q. Carroll Payne, I don't know whether I asked you what is his business with the railroad.

A. Transportation clerk.

Mr. Heyl: That's all.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Glavash, on December 31, 1941, you were on the yard engine, and where did you get on the yard engine?

A. About a block and a half below the Union Depot.

Q. About a block and a half below the Union Depot? And then you rode across to East Peoria, did you?

A. No, I rode from the East Peoria side of the river across the river, and down to a point about a block and a half below the Union Depot.

Q. I wanted to know when you first got on the train. You didn't get on a block and a half below the Union Depot, but you got on at East Peoria?

A. That's right.

Q. About what time of the morning was that?

384 A. It wasn't in the morning. It was in the afternoon.

Q. About what time was it?

A. About 3:15 or 3:30.

Q. Where did you get on it at the yard?

A. I didn't get on at the yard. I got on at the West Washington Street crossing in East Peoria.

Q. Was that near the viaduct?

A. That's just east of the Franklin Street bridge.

Q. Just east of the Franklin Street bridge, and there was quite a crowd of people around there, wasn't there?

A. There were a few people, yes.

Q. What time of the afternoon was it?

A. It was about 3:15 or 3:30.



Q. And that is the time when there is a great number of people from "Caterpillar" coming out, and there is a crowd?

A. There were quite a few cars. I don't know whether they were all "Caterpillar" employees.

Q. When you get on the train, who else was there? I mean on the train.

A. Well, Thielbert, the engineer, and Mr. McNear and Herschel Thompson, the special agent.

Q. And yourself?

A. And myself.

Q. And the three of you rode on the footboard across to Peoria?

A. Yes, sir.

Q. Now, there wasn't anyone there at all that you recognized as any of the employees of the T. P. & W.?

A. No, sir, I didn't see any of them.

Q. Now, on January 1, 1942, at 11:30 P. M., that 385 was at night, was it not?

A. Yes.

Q. And Carroll Payne was riding in your car, and you were leaving the yards over in East Peoria?

A. That's right.

Q. And when you got to the end of the lane, there is a hard road, isn't there?

A. That's right.

Q. There is a "Stop" sign there?

A. I really wouldn't say if there is a "Stop" sign or not. I don't recall seeing it.

Q. But it is your custom to stop there before entering onto the highway?

A. That's right.

Q. These men didn't order you to stop, or anything?

A. They were standing right out in the lane. I would have had to stop or run them down.

Q. As far as threatening you, they didn't threaten you in any way that night, did they?

A. No, sir.

Q. They just simply said to Carroll Payne to stay off the locomotives inasmuch as that is a job for a switchman? That is the substance of the conversation with him, isn't that right?

A. That's right.

Q. That's about all that went on there, and you went

on the highway and went about your business, is that right?

A. That's right.

Mr. Knoblock: I think that is all.

The Court: Is that all with this witness?

386 CARROLL PAYNE, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Carroll Payne.

Q. And how old are you?

A. I am twenty-nine.

Q. Where do you live?

A. Peoria.

Q. And your business?

A. Railroad clerk.

Q. How long have you been employed as a railroad clerk?

A. Eight and a half years.

Q. All the time with the T. P. & W.?

A. Yes, sir.

Q. And on December 30, 1941, were you near the entrance of the freight house?

A. Yes, sir.

Q. And will you tell us what occurred at that time?

A. I arrived at the entrance to the freight house about 7:55 A. M. At that time I saw a tractor of one of our L. C. L. (less than car load) freight units was also stopped at the entrance, and a couple of the men were talking to the driver of the truck.

Q. Did you hear what they said?

A. No, sir, I didn't.

Q. Do you know the name of the driver?

A. Adolph H. Rinck.

387 Mr. Knoblock: What is it?

A. A. H. Rinck.

Q. Were you stopped?

A. I was stopped, but not for—not because they didn't want to allow me to pass.

Q. Did you recognize some of the men that were there at the truck, the L. C. L. truck?

A. Yes, sir.

Q. Who were they?

A. One man was Martin W. Totten, and the other was W. A. Evans.

Q. And they were the ones that were engaged in talking with this truck driver?

A. Yes, sir.

Q. Were there any others present who were not taking part in this discussion with the truck driver?

A. Yes, sir, there were three others present.

Q. Name them, please.

A. One I can't name. The others were W. J. Christoff and Raymond Tinsman.

Q. T-i-n-s-m-a-n?

A. Yes, sir.

Q. And one you could not recognize or name? Did you recognize him in any other manner? Was he a former employee of the railroad?

A. Yes, he was an employee. I haven't seen him enough to know his name.

Q. Do you know that he was a former employee?

A. Yes, sir.

Q. What did you see these men do with reference to the L. C. L. truck?

388 A. I merely saw them talking to the driver.

Q. What did the truck do?

A. It was stopped at the time, of course, and two or three minutes later it drove ahead to the freight house.

Mr. Knoblock: Two or three minutes later it did what?

A. Drove ahead to the freight house.

Q. Which way was the truck going?

A. It was headed off the street, off West Washington Street toward the freight house.

Q. West Washington?

A. That is the entrance to the freight house.

Q. There was that with reference to this lane?

A. That was at the entrance to the lane leading to the freight house.

Q. That's near the Altorfer plant?

A. Yes, sir.

Q. It's not the lane that leads from 24 down to the yards?

A. No, sir.

Q. How many pickets were there?

A. There were five at that time.

Q. Five?

A. Yes.

Q. All former employees of the railroad?

A. Yes.

Q. Did they have anything with them in their hands?

A. No, sir.

Q. Now, I want to refer to the entrance to the freight house on the same day about 2:40 P. M. Did you observe anything there?

A. I observed an automobile stopped by the pickets.

389 Q. Do you know the name of the company that owned the automobile?

A. The automobile was owned by A. Wickert of Wickert Bros. Transfer Company.

Q. And what happened there?

A. The driver stopped and—

Q. Did you hear what was said?

A. I heard part of what was said.

Q. Tell what you heard.

A. The driver asked the pickets if it would be all right for him to go into the freight house for a defense shipment.

Q. I didn't hear what you said.

A. The driver asked the pickets if it was all right for him to go into the freight house for a defense shipment.

Q. What did the pickets say?

A. They said they were instructed not to let anybody pass.

Q. What did Wickert say, the driver of this car?

A. The driver said that was all he wanted to know, if they didn't want him to go through he wasn't going.

Q. Did he go through?

A. No, sir.

Q. What did he do?

A. He turned around and left.

Q. Now, can you tell us the names of the persons that were there at that time and engaged in that transaction?

A. Raymond J. Tinsman.

Mr. Knoblock: What?

A. Raymond J. Tinsman. O. R. Nation.—

Mr. Knoblock: Nation?

A. Yes.—C. H. Dodson, W. L. Clark.

390 Mr. Knoblock: Clark?

A. Clark, W. L.

Q. Did you see William J. Turpin at any time?

A. I thought I had named him. He was one of them.

Q. At that point?

A. Yes.

Q. Were they or not former employees of the railroad?

A. Yes, sir.

Q. Now, were you at the freight house on the same day, 12/31/41, at 3:35 P. M.?

Mr. Knoblock: Wait a minute. 12/31/41?

A. That was the following day?

Mr. Heyl: Following day.

Mr. Knoblock: It is the same, as I have it.

A. I was in the freight house at that time.

Q. What did you observe that occurred at the entrance to the freight house on that date?

A. I knew the driver of the maintenance truck was coming in. I merely observed that the pickets, two pickets, waved their arms at him as he went by.

Q. Did they say anything to him?

A. I don't know. I was too far away.

Q. What was the name of the driver?

A. The driver was Riack again.

Q. R-i-n-c-k-e?

A. R-i-n-c-k.

Mr. Knoblock: R-i-n-c-k-e?

A. R-i-n-c-k.

Q. The names of the pickets?

391 A. Charles T. Waller and Herbert Siebenthal.

Q. Did the truck stop?

A. No, sir.

Q. That was the L. C. L. truck?

A. Yes.

Q. That was one of the railroad's trucks?

A. Yes.

Q. What does L. C. L. stand for?

A. Less than car load.

Q. What is the truck used for?

A. Used for transportation of less than car load shipments between certain points on the eastern division.

Q. In other words, this truck is used to haul freight, is it not?

A. Yes, sir.

Q. Now, were you on or near an engine of the plaintiff on December 31, 1941, at 3:15 P. M.?

A. No, I wasn't near the engine at that time.

Q. Where were you?

A. I was at the Union Station in Peoria.

Q. How did you happen to be at that point?

A. That's where my office is.

Q. Did you know about the movement of this engine and train?

A. I didn't know about it prior to the time I noticed it across the river.

Q. Just tell what you saw with reference to that train.

A. I saw that the train was stopped.

Q. Where?

A. At the east side of the Illinois River bridge.

Q. What did you observe with reference to the stopping of the train?

A. I merely observed it was stopped, that's all.

Q. Then what? Did you notice anything further about it?

A. I went across the river to find out why it was stopped. I noticed there had been damage to the engine, breaking out of the headlight and various windows, and that the crew was not at the engine at that particular time.

Q. Did you see the crew later?

A. Yes, sir.

Q. Where were they?

A. They were scattered at various points away from the engine.

Q. Did you notice any of the striking employees there?

A. After I arrived there I noticed, immediately after I arrived—I saw George C. Kneisley and Frank Lucas.

Q. Did you see any of the others?

A. I later saw H. O. Todd, Hustler Wilson and Jack Totten, Leo Totten.

Q. Leo Totten?

A. Yes.

Q. How about J. L. Knight?

A. I saw him later than that.

Q. At that same point?

A. Yes, after the engine started again.

Q. What did you observe these men do as the engine started?

A. As the engine started, the only one, that is, at the



time the engine was starting, the only one I saw then was Mr. Mack.

Q. What did he do?

A. He drove by in an automobile, and turned back toward the engine and gave a scab sign.

393 Q. To whom?

A. I couldn't say to whom it was directed.

Q. Was there anyone in the car with him?

A. I noticed one other person, a lady in the back seat.

Q. What did she have in her hand?

A. I didn't observe what she had in her hand.

Q. Do you know who that lady was?

A. No, sir, I didn't recognize her.

Q. Was there anything more about that train that you observed? Well, what was the extent of the damage to the locomotive?

A. The damage, as I could see it, was just to the headlight and the windows in the cab being broken.

Q. Now, are you familiar with the number of cars that were attached to engine 70?

A. At that time, yes.

Q. I want to ask you further: Did you observe anything with reference to the engineer at the time you went over there? Fred Thielbert?

A. I noticed that one of his ears (I believe it was his left) was chafed and red as though it had been struck by an object.

Q. What about the fireman? Did you make any observation of the fireman?

A. At the right side of his face it appeared he had been struck by some object.

Q. Near what part of his face?

A. Near his right eye.

Q. Now, how many cars were there coupled to that engine at the time?

A. There were five.

Q. Do you know what these cars contained, and  
394 where they were destined?

A. The first three cars behind the engine contained bottles, empty bottles, which, according to the card that had been tacked to the side of the car, had moved from Muncie, Indiana, from Ball Brothers.

Q. Ball Bros. Manufacturers?

A. Ball Bros. is all I know.

Q. Consigned to what point?

A. The car didn't show the consignee, but I later saw the way bills. They were consigned to Hiram Walker in Peoria.

Q. The three cars?

A. Yes.

Q. The next two cars, what were they?

A. The fourth car was an empty refrigerator car, and the fifth car was an empty Chesapeake & Ohio car.

Q. Where were those cars shipped from?

A. I don't recall.

Q. Now, what was done with the five cars after you arrived?

A. Those five cars were shortly afterwards delivered to the Rock Island Railway in Peoria.

Q. Did you see that done?

A. Yes, sir.

Q. Were you present when they were delivered?

A. I was in the station at the time. I saw where they were delivered.

Q. They were delivered at the regular place for the Rock Island, were they?

A. At a point where they were often delivered for the Rock Island.

Q. Now, did you see the movement of the following 395 men that you have mentioned at the point where this engine 70 was located when you arrived there, or any time later? Did you see where they went, and how they left the place? Kneisley, Lucas, Wilson, Totten and Todd?

A. I didn't see how Kneisley and Lucas left, nor when they left, but I noticed that Todd and Wilson got in an automobile driven by L. C. Totten, Leo Totten.

Q. Which direction did they go?

A. They drove away from Peoria toward the east.

Q. Do you know whether these cars you have mentioned, the three of them containing glass bottles from Muncie, Indiana, were picked up by the Rock Island, or did they remain there?

A. I don't know of my own personal knowledge.

Q. The Rock Island would be the one that would take them?

A. Yes, sir.

Q. Now, do you recall an incident that occurred at the

entrance to the lane leading to the yard from Route 24 on January 1, '42, at about 11:30 P. M.?

A. Yes, sir.

Q. And what occurred at that time?

A. I was leaving the yard in an automobile driven by Boris Glavash, and were stopped at the point where the lane joins Route 24.

Q. By whom?

A. I am not sure that I recall who stopped us or who stood in our way, but one or two fellows did, and we opened the windows and talked to the men.

Q. What did they say to you?

A. One of them said he had heard I had stepped on the footboard of the yard engine, and he told me that the 396 engines belonged to the firemen and engineers and hostlers, and said that he didn't want any trouble caused by any misunderstanding by those who might get on the engines.

Q. Who was that speaking to you?

A. That was C. S. Gabbert.

Q. Who else was present at that time?

A. Standing by Gabbert were Walter McMullen and Delmar Newdigatt.

Q. Defendants in this case? Are they defendants in this case?

A. They are members of the Brotherhood, yes.

Q. You don't know whether they are defendants or not?

A. I can't say.

Q. Are they in the court room?

A. I see McMullen, yes, and Newdigatt.

Q. Were there any other men there at that time?

A. I saw, oh, about fifteen men altogether. Among them was Leo Totten and C. W. Blackburn and John Giminings.

Q. Did you recognize the other men by name or otherwise?

A. I had no opportunity to see all of them, but those that I saw, that is, whose faces I saw, I thought I recognized.

Q. Former employees of the road?

A. Yes, sir.

Q. Is that true of all that you saw?

A. Yes, sir.

Q. Did you observe these men having anything in their hands?

A. I don't recall that they did at that time.

Q. Did you observe them at any other time, in going back and forth through there, having anything in their hands?

A. Not at the entrance to the lane.

397 Q. Or at the freight house?

A. At the freight house I saw on the 30th.

Q. That is December 30?

A. December 30, late in the morning, late in the A. M., that one or two, at least one, of the pickets had a large club in his hand, but he didn't have it very long.

Q. You saw him with it?

A. I saw him, yes, sir.

Q. Where was he with reference to the freight house?

A. At the entrance to the freight house.

Q. What did you see him doing with it?

A. He held it was all.

Q. Do you remember who that was?

A. I don't remember who held it, no.

Q. One of the men that you have named here?

Mr. Knoblock: I object to that.

The Court: Objection sustained. He said he didn't.

Q. Was there any fire there at that time around where he was?

A. Yes, sir.

Q. The fellow that had this club?

A. Yes, sir.

Q. How many men were there at the time?

A. There were at least eight at that time.

Q. Did you observe anything more, in going through the lane at various times, with reference to the acts of these men that you saw in the lane?

A. Nothing other than just conversing with them in the usual manner.

Mr. Heyl: All right! That's all.

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*Cross-Examination by Mr. Knoblock.*

Q. Mr. Payne, on December 30, 1941, when you mentioned the entrance to the freight house at 7:55 A. M. you saw a L. C. L. tractor stopped there at the entrance. You didn't hear any of the conversation, did you?

A. No, sir, I didn't.

Q. You didn't hear any threats made, or anything of that character or kind?

A. No, sir.

Q. And you didn't see—not only didn't hear, but didn't see—any threats made at that time, did you?

A. No, sir.

Q. All you know about that incident is that you saw Martin W. Totten and W. A. Evans conversing with this man?

A. Yes.

Q. And the truck went on its way, and it went through the line, didn't it?

A. Yes, sir.

Q. Now, about 2:40 P. M. at the freight house the truck or auto was stopped belonging to the Wickert Transfer Company?

A. It was an automobile.

Q. And the driver simply said to them could he go on through to get this shipment; and they said they had been instructed not to let anybody through, and he said, "That is all I want to know", and he went back?

A. Yes, sir.

Q. There was no threats made at that time?

A. No, sir.

Q. No force or threats of any character?

399 A. No, sir.

Q. Oh, yes! On December 30, '41, at about 3:35 P. M. when you were at the freight house, you saw a truck driver—you saw a truck go by driven by a man by the name of Rinck. They just simply waved their hands at him, is that all?

A. Yes.

Q. There was no threats or force used or made of any kind or character?

A. No, sir, they didn't talk with him.

Q. And on December 31, 1941, when you went across the river at about 3:15 P. M., when you got over there you saw no one creating any disturbance of any kind or character, did you?

A. No, sir.

Q. And after you got over there, you just saw Kneisley there and Lucas and Wilson and Totten and Todd, and then later a man by the name of Mack, and they weren't in

any way, manner or form threatening anyone or showing any signs of force?

A. Mack just gave him that sign.

Q. He gave him that sign? That is the only eventful thing you saw happen over there?

A. Yes, sir.

Q. And the men later went to their automobiles, and continued their way?

A. Yes, sir.

Q. On this occasion on January 1, 1942, at 11 P. M., 11:30 P. M., you were leaving in a car driven by Boris Glavash?

A. Yes, sir.

Q. And at the end of the lane there where you 400 stopped there is a state highway, isn't there?

A. Yes, sir.

Q. It's necessary for you to stop there in order to obey the traffic rules before entering the highway, isn't it?

A. Yes, sir.

Q. While you were stopped there, you did converse with Gabbert, and he didn't in any way threaten you or show any force at all? He just told you he didn't want any misunderstanding, isn't that right?

A. He told me he didn't want any misunderstanding. Am I allowed to give my impression of an inference?

Q. No, tell what he said.

Mr. Heyl: Tell what he said.

A. He said those engines were for the engineers, firemen and hostlers, and that he had heard that I was on the footboard of one of those engines, and he didn't want any harm created by any misunderstanding.

Q. That was all that was said, is that right?

A. Yes, sir.

Q. They at no time had any clubs there in their possession, nor at any time did they threaten you with any clubs or anything of that kind?

A. I was not personally threatened with any club.

Q. They let you go in and out of there any time you wanted to, isn't that right?

A. Yes, sir.

Q. You know, also, Mr. Payne, that on about the 31st of December, 1941, and the day after the incidents you have recounted here on the 30th, the picket lines were taken off the freight house?



401. A. I didn't observe that myself.

Q. That knowledge came to you later?

A. Came to me by telephone, yes.

Q. And you say on December 30, 1941, when you saw this one picket have the large club, you said he, as I understand you, didn't have it very long?

A. No, I saw him again a short time later, and he didn't have it.

Q. And the men did have a fire there in order to keep themselves warm, isn't that right?

A. Yes, sir.

Mr. Knoblock: That's all.

*Redirect Examination by Mr. Heyl.*

Q. What kind of a club was that you saw him have? Just describe it.

A. Beg pardon?

Q. Describe it, will you, please?

A. It was a tapered club, large at one end and knotted, and small at the other end.

Q. How long was it?

A. Two or two and a half feet long.

Q. How was he carrying it when you saw him?

A. He had hold of the small end, and the large end in the other.

Q. What position was it in?

A. As though—I don't know whether you might understand it.

Q. Did he have it pointing down or up? Can't you tell us?

A. He had it in front of his torso.

Q. Was he standing up or sitting down?

402. A. Standing.

Q. On the picket line?

A. Yes.

Q. Where, with reference to the driveway or the entrance?

A. He was standing at the edge of the driveway.

Q. Near the entrance to the freight house?

A. At the entrance to the freight house.

Mr. Heyl: That's all.

*Recross Examination by Mr. Knoblock.*

Q. You never saw him threaten anybody with that club, did you?

A. No, sir.

Mr. Knoblock: That's all.

The Court: We will be in recess at this time, gentlemen, for a few moments.

(Recess.)

403 FRED THIELBERT, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Fred Thielbert.

Mr. Knoblock: I didn't get it.

A. Thielbert.

Q. Where do you live?

A. I am staying over at East Peoria.

Q. What is your place of residence?

A. Staying at the—100 Fulton Street, Peoria, Illinois.

Q. What is your business or occupation?

A. Engineer right now.

Q. And you were an engineer on yard engine 70 on December 31, 1941?

A. Yes, sir.

Mr. Knoblock: December 31?

Mr. Heyl: December 31, 1941.

Q. Where were you proceeding with that engine?

A. Over to the P. & P. U. "hump" yards.

Q. Did anything occur before you reached the "hump" yard?

A. Yes, sir.

Q. What occurred?

A. When we went through the viaduct, they started throwing rocks at us, but they didn't seem to hurt anything going through the viaduct. We proceeded and went on over to the P. & P. U. yards, made our delivery there and came back, and picked up for Peoria.

404 Q. Where did you pick up for Peoria?

A. We left them on the main line there.

Q. Did anything happen before you reached Peoria?

A. Yes; when we passed the spillway bridge.

Q. Where is that?

A. The spillway drive bridge or Dry Run bridge, whatever they call it. I am not very well acquainted there.

Q. Just before you reach the east end of the Peoria river bridge? Illinois River bridge?

A. No, there is a little culvert bridge there.

Q. Near the Caterpillar Trail, is it?

A. Yes.

Mr. Knoblock: This is in East Peoria?

Mr. Heyl: In East Peoria.

Q. What happened there?

A. I saw some men there, and when the engine started passing they started throwing rocks again, and broke out the window on my side.

Q. That is the right side?

A. The right side.

Q. Did anything happen later on before you reached Peoria?

A. After I got by, I saw them getting in cars, and when we got to the board we got the derail and had to slow down.

Mr. Knoblock: I don't know where he means.

Q. Is that the board—

A. I think they call it Washington and Franklin Street, just before you cross there.

Q. At the Rock Island crossing, isn't it, before you cross the bridge?

405 A. Before you cross the bridge.

Q. Is it the board for the bridge?

A. Yes, you get it to go across the bridge.

Q. What occurred there?

A. I slowed down for the board, and while I slowed down someone opened up the rear end angle cock of the car, and stalled my engine.

Q. What else happened?

A. Then they started in stoning, throwing stones, so bad that no one could stay on the engine.

Mr. Knoblock: I object to that.

The Court: Yes, state what happened.

A. All right.

Q. Were you able, because of these rocks coming in the engine, to remain there?

A. No, that was so bad, coming in so bad.

Q. Were you hit?

A. I was hit in the back once, but it didn't hurt me any.

Q. What was it you were hit with?

A. I couldn't say whether it was a rock, or whether it was a brick bat. They was throwing both.

Q. Who was your fireman?

A. The fireman was Wilson Hardy.

Q. And did he leave the engine?

A. Yes, he did.

Mr. Knoblock: Did you say "Wilson Hardy"?

Mr. Elliott: Hardy.

Q. Did anyone leave the engine when you did?

A. They was all gone before I left.

406 Q. And what happened after you left the engine?

Where did you go? What did you do?

A. I started going up the tracks, and some of them started after me, and one of them did get me, and there was four more come and got me.

Q. What did they do with you?

A. One grabbed me around the throat, and one of them hit me in the ear and told me not to get back on the engine.

Q. What else did they say to you?

A. They knocked a pal of mine out over there, and one of them said he didn't think he would get back on the engine, that I would be all right. Another one said he didn't believe it, and they ought to carry me over and knock me out beside him.

Q. Did they say where your pal had been knocked out?

A. He was over across the street.

Q. Do you know these men who made the statements to you?

A. I would know the man that hit me if I would see him.

Q. Do you see him in the court room?

A. Yes.

Q. Will you walk down there, and point him out?

A. Yes, sir (complying).

Mr. Heyl: Will you stand up, please, so we can see who you are pointing to? What is your name?

Mr. Gimming: John J. Gimming.

Q. Now, how many men were with this man, John J. Gimming, whom you have just identified in the body of the court room?

A. I couldn't just exactly say; four or five men.

Q. And do you recognize the faces of some of these in the court room?

407 A. He is the only one I would recognize.

Q. Is he the one that made those statements to you?

A. No, there was another little fellow that made the statement to me.

Q. Who was it that socked you?

A. I couldn't say that because they was behind me and beside me, and I couldn't see.

Q. What other blows did you receive at that time?

A. That was all.

Q. What did they do after they made these statements to you, and told you they had knocked your pal out?

A. They left.

Q. What did you do?

A. I went across the street to see if I could find the fireman.

Q. What?

A. I went across the street to find another fireman. I had a student fireman on there. His name was DuBois.

Q. When they made this assault upon you you have just described, and made these statements, where were they?

A. They was on company property.

Q. And were these men you have just described the men that were throwing stones at you?

A. Where were they first?

Q. I say were these men that had been throwing stones at you and your engine?

A. No, I couldn't say that, whether they throwed the stones, because you couldn't look out the window, they was coming too fast.

Q. While you were driving the engine?

408 A. Yes.

Q. What did you hear them saying about stones, if anything?

A. I heard them holler and said they was all even with the other side, that they had better get around and get them.

Q. Can't you speak up?

A. They was all on the right hand side of the engine throwing stones, and they happened to see some of them dodged in the cab, and they feared they were getting off on the left hand side, and I heard someone say, "They are getting off on the left hand side. Let's go over and get them."

Q. Did all the men in charge of this train leave the train when you did?

A. Yes, sir.

Q. Was there anyone left in the cab of the locomotive?

A. No, sir.

Q. You stated that after they had assaulted you, they left you. What did you do?

A. I went across the street to find the men that they should have knocked out.

Q. That they said they knocked out, is that what you mean?

A. Yes.

Q. Then what did you do?

A. I found him over there.

Q. Where was he?

A. Another man was carrying him on up toward the filling station there.

Q. Do you know the man that was carrying him?

A. No, I don't.

409 Q. What did you do after that?

A. After I stood there a little while, I went on back over to the engine.

Q. Then what?

A. Got up in the engine and got some water in her, and got ready to make delivery to go across the river to Peoria.

Q. Was Mr. McNear, the president of the railroad, in this?

A. He was riding the footboard across the bridge.

Q. You delivered those cars that were hooked to that engine when you left it?

A. Yes.

Q. And you delivered those cars in Peoria, did you?

A. Yes, sir.

Q. Who was the man that you say was knocked out?

A. DuBois.

Q. He was on the engine as one of your helpers?

A. Yes.

Q. Or students?

A. Yes, sir.

Q. How far did you find him from the train when you did find him?

A. I judge it would be two hundred feet, maybe a little bit more.

Q. Do you know the name of the man that was carrying him to some point?



A. No, I don't.

Q. Did you see DeBois again that day?

A. Yes, he went on the engine with me.

Q. Later on?

A. Later on him and the engine foreman and a brakeman—switchman—

Q. Now, did you observe the men that got into the 410 cars where you were stoned first on that trip?

A. How's that?

Mr. Heyl: Read it to him.

(Question read by reporter.)

A. I seen them get into the cars.

Q. Did you recognize any of the men?

A. No, but I saw the cars stop up at the other end.

Q. Were they the same cars that had stopped?

A. Yes, the same cars.

Q. Did you see this man, John J. Gimming, that you identified in the court room as being one of the occupants of one of these cars?

A. No, I couldn't say that.

Q. Were there any women in any of these cars?

A. No.

Mr. Heyl: I think that's all. You may cross-examine.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Thielbert, where did you say you were living now?

A. I am staying down here at the yards right now.

Q. At the T. P. & W. yards in East Peoria?

A. Yes, sir.

Q. You don't have any room or residence other than that, is that right?

A. No, not at the present time.

Q. Didn't I hear you say you were staying at 100 Fulton Street here in Peoria?

A. Yes, I did.

Q. Are you staying there?

411 A. No, not no more.

Q. When did you stay there?

A. I stayed there about four weeks.

Q. Four weeks, and when was that time?

A. Before I went over here.

Q. And where did you live prior to that?

A. I lived at 407 West Main, New London, Iowa.

Q. At New London, Iowa?

A. Yes.

Q. What railroads did you work for before you went to work for the T. P. & W.?

A. C. B. & Q.

Q. How long did you work for them?

A. Fourteen years.

Q. When did you leave their employ?

A. 1930.

Q. And have you railroaded any since 1930?

A. No, sir.

Q. And what was the type of work that you did when you were with the C. B. & Q.?

A. Fired.

Q. Is this the first time you ever ran a train as an engineer?

A. Yes.

Q. Are you one of the men that have been offered this \$10.00 a day bonus during this situation?

A. They said we would get a day's wages and \$10.00.

Q. And \$10.00 more? Who told you that?

A. The superintendent.

Q. Mr. Best? On December 31, 1941, what time did you report for work that day?

A. 6 o'clock.

Q. In the morning?

A. In the morning.

Q. And, now, you say you were going to the P. & P. U. "hump" yards. What time of day were you going over there?

A. Well, it was about 2 o'clock.

Q. 2 o'clock in the afternoon?

A. Yes. About 2 o'clock when we got over there at the P. & P. U. yards.

Q. And what time was it when you went past the viaduct?

A. Well, it must have been around twenty minutes to 2, something like that.

Q. Twenty minutes to 2 in the afternoon?

A. Yes.

Q. Who was in the cab of the engine with you at that time?

A. Well, there was John Heilman.

Q. John Heilman, is that right?

A. Heilman.

Q. Who else?

A. And Wilson Hardy.

Q. And what was John Heilman's work that day in there?

A. He was engine foreman.

Q. Engine foreman?

A. Yes.

Q. And who else besides Heilman and Hardy?

A. DuBois.

Q. And he was the student fireman, is that right?

A. He was the student fireman.

413 Q. And Hardy was the fireman?

A. Yes.

Q. Where does Hardy come from?

A. Well, I couldn't say. I think he lives in East Peoria.

Q. DuBois, he was the one that was your pal, is that right?

A. He was the one that was hit.

Q. Where did he come from?

A. I couldn't say. They are all strangers to me.

Q. What was the reason for your coming from New London, Iowa, to Peoria about a month ago?

Mr. Heyl: We object to that as immaterial.

The Court: I think he may answer.

He came here to take employment, is that correct?

A. How's that?

The Court: Is that the reason you came here, to accept employment?

A. Yes, sir.

Q. From whom?

A. From anyone I could get employment from.

Q. I see. Had anyone suggested to you that if you came over here you might be able to get on the T. P. & W.?

A. No, sir.

Q. They did not? Now, at the viaduct you do not know who threw the rocks?

A. No, sir.

Q. You didn't see anybody throw any rocks, in fact, did you?

A. Yes, sir.

Q. But you couldn't recognize them?

A. No, sir.

414 Q. But you couldn't recognize them now as any employee or employees of the T. P. & W.?

A. No, sir, I couldn't.

Q. And that same thing is true at the spillway bridge near the Caterpillar Trail in East Peoria, is that right?

A. Yes, sir.

Q. You didn't recognize anybody who was there?

A. No, sir.

Q. Now, at the Washington and Franklin Street crossing in East Peoria, you say your rear end angle cock was opened on the engine, is that right?

A. Yes, sir.

Q. Where is that situated?

A. On the rear end of the box car.

Q. Rear end of what?

A. Rear end of our box car.

Q. How much in cars did you have on there at that time?

A. Four.

Q. You don't know who did that, do you?

A. No.

Q. Was any member of your crew back there at that time?

A. No, sir.

Q. They were all up in the engine?

A. Yes, sir.

Q. Besides yourself, Heilman, Hardy and DuBois, was anybody else in your engine?

A. There was two brothers switchmen.

Q. Two brothers who were switchmen, is that right?

A. Yes.

415 Q. Could that be Widmer?

A. Widmer, that's it.

Q. And they are from Washington, Illinois, is that right?

A. Yes.

Q. Well, who else?

A. There was a railroad detective.

Q. What was his name?

A. I couldn't say what his name is.

Q. Did he carry a gun?

A. I couldn't say that.

Q. But was he a special detective?

A. He's supposed to be.

Q. Now, who else?

A. That was all.

Q. Why did you leave the C. B. & Q.'s employment in 1930, Mr. Thielbert?

Mr. Heyl: We object to that as immaterial.

The Court: No, he may answer.

A. Well, I didn't go back to work.

Q. Was there a strike there?

A. No.

Q. You say you didn't go back to work. Why didn't you go back to work?

A. I went back to my trade cutting monuments.

Q. You had worked at the C. B. & Q. fourteen years, you say, but your real trade was cutting monuments?

A. Cutting monuments.

Q. How long had you been cutting monuments?

416 A. Eleven years one place.

Q. Where was that?

A. Burlington, Iowa.

Q. What years were they?

A. Well, 1918, when I went to work on the "Q.", and it was before that.

Q. You worked at the "Q." from 1918 to 1930, is that right?

A. Correct.

Q. This monument company in Burlington, Iowa, what was the name of it?

A. Burris.

Q. Burris Monument Company?

A. Yes.

Q. Then on the Washington and Franklin Street crossing in East Peoria you say you slowed down to get the board, is that right?

A. Yes, sir.

Q. And they started to throw rocks there, as I understand it. Is that right?

A. Yes, sir.

Q. What time was that? What time of day?

A. Franklin Street?

Q. Yes.

A. Franklin and Washington?

Q. Yes.

A. I imagine that's about 3:35.

Q. That was about 3:35 in the afternoon, is that right? And when they started to throw, which side of the engine did you get out of?

A. I got out on the left side.

417 Q. On the left side? Where were these men standing with reference to the engine when they were throwing stones?

A. First they were on the right side.

Q. And you got out the left side?

A. Yes, sir.

Q. Then you started away from the engine in what direction?

A. East.

Q. And how far did you go before Mr. Gimming, as you say, caught you?

A. I didn't get very far.

Q. Well, about how far?

A. Oh, I imagine twenty-five feet maybe, or thirty.

Q. There was a conversation that you testified to there about them telling you not to get back on the engine?

A. Yes, sir.

Q. That took place there? You don't know who said that, do you?

A. No, I couldn't recognize him.

Q. I see. What else was said there?

A. That would be all. They said—

Q. They said something about getting out the left side?

A. What's that.

Q. Didn't you say someone said they were getting out the left side?

A. That is before I got out.

Q. That is before you got out?

A. That is before I got out of the engine.

Q. Now, other than John J. Gimming, you are not able to recognize anyone there at that time?

A. No, sir.

Q. And after this was over, why, you went back  
418 to the cab and proceeded to run the engine?

A. I went over and got my pal first.

Q. Your pal, the boy?

A. The boy.

Q. And took him with you?

A. I took him over to the engine.

Q. And he got on the engine the same time you did?

A. Yes.

Q. He didn't get on later? You got on about the same time?

A. About the same.



Q. Then you proceeded to run the engine over the bridge toward Peoria?

A. Yes, sir.

Q. When you got to DuBois, he was not knocked out then?

A. He was coming to.

Q. He was able to talk to you?

A. He was still a little stunned.

Q. But he was talking to you?

A. Yes, sir.

Q. Do you know where the boy lives?

A. No.

Q. Do you know where he comes from?

A. No.

Mr. Heyl: I object; immaterial, not cross-examination.

Mr. Knoblock: Maybe I did go over that. If I did, I apologize to the court.

The Court: He said he didn't know anything about it.

Q. Do you know where Heilman went to?

419 A. No, sir.

Q. And Heilman come and got back on the engine with you?

A. Yes, sir.

Q. Did Hardy get back on the engine?

A. No, sir.

Q. Did this special detective—did he get back on the engine?

A. Yes, sir.

Q. Did the two Widmer brothers get back on there?

A. No.

Q. When you left the engine, did the special detective leave the tab of the engine, too?

A. When I left the engine?

Q. Yes.

A. He was off before I was.

Q. He got off before you did?

A. Yes, sir.

Q. You don't know where he went?

A. No, sir.

Q. Do you know what he did?

A. I heard later he was calling for help.

Q. As a result of this, you never swore out any warrants?

A. What's that?

Q. As a result of this attack you have testified to, you didn't swear out any warrants?

A. No, sir, not at that time.

Q. And you at no time have in any way or form brought this to the attention of the public authorities or public officials, have you?

A. No, sir.

420 Q. You have never gone to them in any manner or form and asked for protection, have you?

A. No, sir.

Mr. Knoblock: That's all.

The Court: Is that all with this witness?

Mr. Heyl: That's all.

DON DuBOIS, called on behalf of the plaintiff, and having been first duly sworn, testified as follows:

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Don DuBois.

Q. How old are you?

A. Twenty-one.

Q. Where do you live?

A. 3328 North Madison.

Q. How long have you lived in Peoria?

A. About two months.

Q. What is your business or occupation?

A. Fireman on the railroad; on the T. P. & W.

Q. Can you speak a little louder?

A. Fireman on the T. P. & W.

Q. On December 31, 1941, were you a fireman on any engine of the road?

A. I was on switch engine number 79.

Q. Who was your engineer?

421 A. Fred Thielbert.

Q. Is that the gentleman who just testified?

A. I believe so.

Q. Now, will you tell the court what happened after you left the yards on that day?

A. Well, as we were leaving the yards, at the end of the yards under the viaduct we received a few stones against the side of the engine and against the top of it, and we continued on down the track to the spillway bridge.

Q. At the viaduct did you observe where the stones came from?

A. Well, I saw several fellows with stones along the side of the track; and I heard one hit the cab and I ducked behind the blinds on the side.

Q. Where were these men that had stones or rocks in their hands? Stones or bricks in their hands?

A. They were alongside the right-of-way there.

Q. Where, with reference to the picket line?

A. In front of the picket line.

Q. When you got to the spillway bridge, what happened?

A. We received another hail of stones and rocks and brickbats which broke out all the glass on the north side of the cab.

Q. Is that the engineer's side?

A. That's right.

Q. You were traveling west, were you?

A. That's right.

Q. As you approached the Illinois River bridge, what happened?

A. We were approaching the bridge going slow and waiting for the board, and when the engineer whistled for the board someone pulled the angle cock and shut off his air.

422 Q. Did you observe who did that?

A. No, sir.

Q. Did you observe anybody about the rear of the train at that time?

A. No, I didn't.

Q. What happened after that?

A. We saw three or four cars sitting out there, and a bunch of fellows standing out there ready to throw stones and rocks and things, and they started to coming into the engine so fast I got behind one of the blinds, and one of the fellows got off the engine, and the rest of them started getting off, and I decided to get off and see where they were going. I didn't think it was safe to stay because the stones were coming in so fast. I climbed down off the engine and saw several of the fellows getting in the cars, and I thought I would, too, to be out of danger of the stones, and the driver of the automobile jumped out, and I decided I had better get out, too, and there was a gasoline truck, Standard Oil truck, and I started across the road and four fellows started up. They caught up with me in front of one of the filling stations across the road there and

started hitting me, and one of them I was carrying one of these gas hose nozzles, and I believe one of them hit me with that. I saw him swing it.

Mr. Knoblock: I can't hear it.

A. After I saw these fellows slugging me, and I was trying to keep them from hitting me as best I could—and I was hit with something and knocked out. I guess they left me laying in the snow, and when I came to, or partly so, some fellow was trying to pick me up, and that gas hose nozzle was still lying there.

423 Q. Describe that gas hose nozzle.

A. Well, it's the end of the nozzle that comes on the end of the gas hose that has the lever for shutting off the flow of gas.

Q. How long was that?

A. I imagine it was about eighteen inches long.

Q. Did you see the man that was drawing back with that in his hand to hit you?

A. I did.

Q. Can you identify him?

A. I can.

Q. Do you know his name?

A. No, I don't.

Q. Is he in the court room?

A. I believe so.

Q. Will you go down and pick him out?

A. (Witness complies.) It's the second fellow from the end in the fourth row.

Mr. Heyl: Will you stand up, please?

What is your name?

Mr. Brown: William L. Brown.

Q. Is that the man?

A. Yes.

Q. After you saw this man that you have identified as William L. Brown with this gas hose nozzle in his hand, drawing back, do you remember anything after that?

A. No, I don't.

Q. When you came to, where were you with reference to this train?

A. I was across the road from the train.

Q. Were these men there?

424 A. No, they were gone.

Q. Did you observe, or do you know, the other men that were with this William L. Brown?

A. No, I don't believe I could identify them.

Q. Did they say anything to you while they were making this assault upon you?

A. They kept telling me to quit, to get off the railroad, that they were going to beat us all up for staying there.

Q. When were they making these remarks to you?

A. When they were trying to hit me.

Q. Now, was there anything else that they said to you?

A. Well, not that I recall offhand.

Q. Where did they strike you? Where did this man Brown strike you with this gasoline nozzle?

A. At the temple at the side of the head here (indicating).

Q. You are pointing to the right side of your head? Right temple?

A. Yes, sir.

Q. Did anyone else in that crowd strike you?

A. They all hit me with their fists.

Q. How many were beating you up?

A. There were four of them, that's all I could say. I don't believe there were any more.

Q. Did you make an effort to get away from them after you left your engine?

A. I did.

Q. How did you travel? Run or walk?

A. I was running.

Q. Do you remember how many were around there?

425 A. Well, as near as I could count there must have been in the neighborhood—There was at least twenty men there. I never tried to count them.

Q. What were they doing? What did you observe that they were doing?

A. Before I got out of the engine, they were all throwing rocks, but after I got out of the engine they were chasing us fellows.

Q. Did you observe that they chased anyone besides yourself?

A. I didn't see them because I was in too much of a hurry.

Q. You had all you could do to take care of yourself, is that it?

A. That's right.

Q. Later did you return to the engine?

A. I did.

Q. And during this period of time, and before you

started the engine to go across the Illinois River bridge, did you observe any automobiles near this train?

A. Well, there was a great number of automobiles around there.

Q. Did you notice any of these men that were chasing you or beating you getting in or out of an automobile?

A. No, I didn't. I probably wouldn't have known them if I had.

Q. You later returned to the engine and traveled across the river with the train, did you?

A. That's right.

Q. What did you do after that?

A. We left the cut of cars we had in the yards over there, and returned to the round house.

Q. What did you do, if anything, after that?

A. I believe I went over to see how badly I was damaged.

Q. You mean personal injuries? Is that what you mean?

426 A. Yes.

Mr. Heyl: That's all.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. DuBois, you have been living here at 3328 North Madison about two months, you say?

A. No, not at that address two months.

Q. How long have you lived at that address?

A. About a month.

Q. You have lived here in Peoria two months?

A. Approximately two or three months.

Q. Where did you live before you lived here in Peoria?

A. Bloomington.

Q. What was your address at Bloomington, Illinois?

A. 201 North Mason.

Q. Mason Street?

A. That's right.

Q. What was your work in Bloomington?

A. I was selling vacuum cleaners for the Hoover Company.

Q. And what type of work? When did you first go to work for the T. P. & W.?

A. December 29.

Q. 1941?

A. That's right.



Q. What were you doing here in Peoria prior to going to work for the T. P. & W.?

A. Working for the Hoover Company.

Mr. Heyl: Louder, please.

427 A. I was working for the Hoover Company.

Q. Are you one of the men that was promised \$10.00 extra bonus during this situation besides your regular rate of pay?

A. I was told I would receive a \$10.00 bonus.

Q. Who told you that?

A. I believe one of the men did. I am not positive just who.

Mr. Heyl: I move to strike it as not binding.

The Court: I think it may stand.

Q. Was December 29 the first day you went to work for the T. P. & W.?

A. That's right.

Q. What did you do that night?

A. That day I was sent up to be examined.

Q. How did it come to your knowledge that there was employment open at the T. P. & W.?

A. I read it in the newspaper.

Q. You read it in the newspaper about the strike?

A. That's right, I read in the newspaper about they wanted men to work at the T. P. & W.

Q. Had you ever had any experience as a fireman before?

A. No, I haven't.

Q. This was your first work on any railroad engine of any kind, is that right?

A. That's right.

Q. You started out as a fireman?

A. Student fireman.

Q. And nothing happened that was eventful on the 29th when you went to work for them? Did you work on the 30th?

A. I did.

428 Q. In what capacity did you work?

A. Student fireman.

Q. There was nothing eventful that happened on the 30th, was there?

A. Well, offhand I don't recall anything.

Q. And on the 31st what time did you go to work that morning?

A. About 9 o'clock, I believe.

Q. At about 9 in the morning?

A. Around 8:30 or 9.

Q. Where did you report for work?

A. At the yards.

Q. What?

A. At the yards.

Q. And after you reported for work, where did you go?

A. Well, we stayed on the switch engine all day long.

Q. On this engine, who all was in that?

A. Well, there was the engineer.

Q. What was his name?

A. Thielbert. This is the 31st?

Q. Yes, I am talking about the 31st now. Thielbert was the engineer?

A. That's right.

Q. How long had you known Thielbert?

A. That was the second day I had known him.

Q. And got pretty well acquainted those two days, is that right?

A. The first day I didn't work with him.

Q. Would you consider him a pal of yours?

A. I believe so now.

Q. I see. You had reported for work about 8:30 or 9 o'clock, and where did you go?

A. Well, we—I don't recall just what we did during the day, but we stayed in the yards most of the day.

Q. And who was the fireman on this train?

A. Wilson Hardy.

Q. Do you know where he is from?

A. No, I don't.

Q. How long have you known him?

A. The first day I went to work, the 30th.

Q. You never saw him before, is that right?

A. That's right.

Q. Who else was in there?

A. There was a special agent.

Q. Do you know his name?

A. Thompson,—

Q. Thompson?

A. I believe.

Q. And who else?

A. Mr. Heilman,—

Q. Who else?

A. —and a fellow by the name of Payne.

Q. Payne?

A. That's right.

Q. What was his first name? Do you know?

A. John Payne.

Q. It wasn't Carroll Payne?

A. No.

Q. Where was Payne from?

A. I don't know.

Q. And who else?

A. And Bob and Harley Widmer.

430 Q. They are from Washington, Illinois?

A. I don't know.

Q. And who else?

A. Offhand that's all I recall that was on there. Oh, Clarence Pullen.

Q. Who?

A. Clarence Pullen.

Q. Pulling?

A. He was a brakeman.

Q. P-u-l-l-e-n?

A. I believe so.

Q. Where is he from?

A. I don't know.

Q. Have you continued to work for the T. P. & W. up to the present time?

A. I have.

Q. And, now, you don't know who pulled the angle cock, do you?

A. I don't.

Q. The fact of the matter is you don't know exactly what stalled the train, do you?

A. Yes.

Q. You say you had experience on the train before?

A. No.

Q. You had never had any train experience before?

A. That's right.

Q. You still know what stalled the train?

A. I didn't then but I do now.

Q. You didn't then?

A. That's right.

431 Q. And you have since discovered what caused it?

A. Yes.

Q. Have you since performed that operation yourself to see how it would work?

A. I haven't.

Q. You have seen it done since that time?

A. I have.

- Q. Who has done that?  
A. A brakeman out there showed me.  
Q. When you got off of the train, which side of the train did you get off on?  
A. On the south side.  
Q. That would be which side? The right or the left?  
A. The left.  
Q. Who got out first?  
A. Mr. Heilman, I believe.  
Q. Who was next?  
A. The special agent that was riding with Thompson.  
Q. And then who was next?  
A. I don't recall; Wilson Hardy, I believe.  
Q. And after him?  
A. Well, the two Widmer boys got off.  
Q. And who was next?  
A. Pullen was next.  
Q. And who was after him?  
A. I was.  
Q. Anybody else?  
A. I don't know. I didn't see who got off after me.  
432 Q. Now, when you got off there, you say you started running, and you were finally caught, is that right?  
A. That's right.  
Q. Do you know the filling station where you were caught?  
A. I do.  
Q. What is the name of it?  
A. I don't know the name of it.  
Q. Is it located on Washington Street in East Peoria?  
A. I believe so. I believe that's Washington Street.  
Q. About how far is it from the Franklin Street bridge?  
A. I would say approximately a hundred feet.  
Q. About a hundred feet?  
A. Or better. I imagine it would be nearer to a hundred yards.  
Q. Nearer a hundred yards?  
A. Yes.  
Q. Do you know what kind of gasoline they sell there?  
I am trying to identify the station.  
A. I never looked to see.  
Q. Which side of Washington Street is it located on?  
North or south side?  
A. The south side.

Q. The south side?

A. That's right.

Q. You say this gentleman out here that you picked out who identified himself as William L. Brown, he is the one that hit you with this gas hose nozzle?

A. I saw him swinging it, and someone hit me.

Q. Was there anybody else there you can identify?

A. No.

433 Q. He is the only one that you recognize?

A. That's right.

Q. That you recognize now?

A. That's right.

Q. As you were going up there, were you one of the men in the cab that was thumbing their noses at the man?

A. They was none of them thumbing their noses at these men.

Q. You had them under observation all the time?

A. No.

Q. You didn't do any cursing?

A. No, sir.

Q. Or call them "suckers"?

A. No, sir.

Q. How about the rest? Did you hear any of the rest of them call them "suckers"?

A. I never heard any of the rest saying anything to them.

Q. You didn't?

A. That's right.

Q. Then you returned to the engine, did you?

A. That's right.

Q. And you proceeded to go with the engine then?

A. That's right.

Q. Who else returned to the engine?

A. The engineer and Mr. Heilman, and Payne.

Q. You say it was John Payne?

A. That's right.

Q. Did anybody else return?

A. Not that I recall.

Q. Did anybody else come up there?

434 A. At the time we were standing there?

Mr. Knoblock: I will withdraw that question.

Q. You say Heilman, Thompson, yourself and who else now got in the cab?

A. I believe the agent rode with us. I am not positive about that.

Q. And Payne was also in the cab?

A. That's right.

Q. And then you proceeded on your trip, did you?

A. That's right.

Q. Was anybody else riding in or about the engine?

A. I believe Carroll Payne got on the engine.

Q. Anybody else?

A. Not that I know of. I couldn't see the footboard on the front or back.

Q. You could not?

A. No.

Q. Did you see Mr. McNear over there then?

A. I saw him at the accident. I saw him at the time after the fellows had left, after the engine was stopped.

Q. How long had you worked for the Hoover Company?

A. I started in June.

Q. Of this year?

A. That's right.

Q. Where did you work before that?

A. In the Corn Products at Pekin.

Q. Corn Products at Pekin?

A. That's right.

Q. Where is your home?

A. 3328 North Madison.

435 Q. Where were you born and reared?

A. Lawrenceville, Illinois.

Q. How long had you worked for the Corn Products plant at Pekin?

A. About three years and a half.

Q. You lived in Pekin during that period of time?

A. That's right.

Q. Where did you live in Pekin?

A. 1403 South 8th Street.

Q. 1403 S. 8th Street?

A. That's right.

Mr. Knoblock: That's all.

Mr. Heyl: That's all.

The Court: Call another witness.

Mr. Heyl: This second lady in the first row. Will you please come up and take the stand?



436 ANNA NEWDIGATE, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to:

*Direct Examination by Mr. Heyl.*

Q. What is your name, please?

A. Anna Newdigate.

Q. What is your husband's name?

A. Delmar.

Q. Newdigate?

A. Uh-huh.

Q. And what is his connection with one of the Brotherhoods?

Mr. Knoblock: I object to that as not the best evidence.

Mr. Heyl: This is for identification.

The Court: What is the purpose? Is he here?

Mr. Heyl: I understand he is here, but I don't care to disclose to Your Honor the purpose of this, but it is for the purpose of identification.

Mr. Knoblock: He is the best man. There is nothing to impeach yet.

Mr. Heyl: I am not impeaching anyone.

The Court: I guess he is entitled to an answer.

Do you know what his connection is?

A. He is general chairman, that's about all I know.

Q. Of the Peoria group?

A. Brotherhood of Railroad Trainmen.

Q. And do you drive an automobile?

A. Occasionally.

437 Q. What kind of an automobile do you drive?

A. A green DeSoto '40.

Q. Where were you on December 31, 1941, about 3:15 P. M.?

A. In my home.

Q. Were you in East Peoria any time that day?

A. No, I wasn't.

Q. On West Washington Street?

A. I was not.

Mr. Heyl: That's all.

Mr. Knoblock: That's all.

Trial recessed at 1 o'clock P. M.

Trial resumed at 3:15 o'clock P. M.

DON DuBOIS, recalled, having been previously sworn, testified as follows, in answer to:

*Further Cross-Examination by Mr. Knoblock.*

Q. Mr. DuBois, you are the same man that was on the stand when we took a recess here about 1 o'clock, aren't you?

A. Yes, sir.

Q. And with reference to your employment at the Corn Products plant at Pekin, that is where you say you were working?

A. That's right.

Q. What was the reason for your discharge there?

438 Mr. Elliott: Object; immaterial.

Mr. Knoblock: It is very material on the question of his veracity.

The Court: He may answer.

A. I was laid off or quit or fired.

Q. Why were you fired?

Mr. Elliott: We object to that.

The Court: I think the objection will be sustained.

Q. Isn't it a fact you took another employee's money down there, and were given six weeks to pay it back?

A. I did not.

Mr. Elliott: I object.

The Court: He answered.

Mr. Heyl: I move to strike the answer as immaterial, not impeachment.

The Court: I scarcely see how they attack his credibility, but he answered it, anyway.

439 JOSEPH F. ASHCRAFT, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to:

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Joseph F. Ashcraft.

Q. Where do you live?

A. 1245 West Washington, East Peoria.

Q. What is your business or occupation?

A. I work in the trailer camp.

Q. Are you in any way connected with the T. P. & W.?

A. No, sir.

Q. Have you ever been?

A. No, sir.

Q. Were you subpoenaed as a witness to testify in this court?

A. Yes, sir.

Q. Do you recall on December 31, 1941, of some difficulty with reference to a train of the T. P. & W. which was stopped near the bridge?

A. I do.

Q. Where were you at that time?

A. I was just across the street.

Q. And on what street were you?

A. That's Washington Street.

Q. West Washington?

A. West Washington.

Q. And what did you see?

A. Well, at first I heard something like the air  
440 brakes put on right quick like they might have stopped  
for a car on the crossing, and I went out to see if they  
hit a car.

Mr. Knoblock: I object to that.

The Court: Yes, objection sustained.

What did you see?

A. And when I looked over, I seen some men getting out of the engine.

Q. Which side?

A. On the left side.

Q. All right!

A. And they started to run, and there was four or five or six, I wouldn't say just how many, but, anyway, I think there was about five at the least. They was running, and one fellow got into an automobile, and a fellow run up to the automobile and pulled him out after he had got in, and another fellow run up the street, up Washington Street toward the garage. There was three or four after him, and they hit him with a nozzle of a gasoline filling station pump hose, it was.

Q. Did you see him then after he was hit?

A. After it was all over, I run up and tried to give him aid. He was lying face down on the ground and it was cold, and I tried to help him up out of the snow. He didn't get up right away, so finally he rallied a little bit, and I

picked him up and got him on his feet, and I walked him toward the gasoline station, and he figured he could take care of himself, and I handed him this nozzle. They had dropped that in the scuffle, and I handed it to him, and I don't know what he ever did with it.

Q. Will you describe that nozzle to the court, the size of it?

441 A. Well, it's a nozzle that you fill an automobile from a gasoline filling station. It's probably that long, the hose (measuring with hands).

Q. How long do you say? We can't get that into the record.

A. Well, it's a foot.

Q. And is it metal?

A. Yes, sir.

Q. Where was this man struck with the nozzle?

A. I couldn't say where he was struck; probably in the body or shoulder.

Mr. Knoblock: Wait a minute! I object.

The Court: Objection sustained. You didn't see where he was struck, is that it?

A. Yes.

Q. Did you see where the man was that struck him?

A. I saw the man, but I couldn't identify the man.

Q. Can you identify any of the men you saw there?

A. I can identify the man that I picked up.

Q. Was it the gentleman that went out of the door when you came in?

Mr. Heyl: Is Mr. DuBois in the room?

(Mr. DuBois rises.)

Q. Is this the man here you picked up, or can't you see?

The Court: Stand up, and save time.

Is that the man?

A. Yes, sir.

Q. Is that the man you picked up?

A. Yes, sir.

Q. You can't identify the ones that assaulted him, can you?

A. No, I couldn't.

442 Q. How many were there around him at the time he was hit with this hose?

A. There was about three.

Q. Where was the rest of them?

A. They was going other directions. I don't know where they was at.

Q. Did you see any rocks thrown there that day?

A. Yeah, I seen some throwed at the engine, and broke some glasses out of the cab.

Q. Now, did you see any automobiles about there that day?

A. Well, the one that the fellow got into and was pulled back out of. That was on the Washington Street side.

Q. Did you see any other cars there?

A. No, sir.

Q. Was this the man that was pulled out of the car that you have identified here in the court room as Mr. DuBois?

A. I couldn't say as to that.

Q. Now, where did you first see the men that were being chased? Where did they come from?

A. They was coming out of the left side of the engine cab, and starting to run. I seen them climbing down out, and then they started running up the street.

Q. The other men were chasing them, is that right?

A. Yes, sir.

Q. Where did the other men come from?

A. I couldn't say.

Mr. Heyl: That's all. You may cross-examine.

Q. You say your name is Ashcraft?

A. Joseph F. Ashcraft.

Q. And you live at 1245 West Washington Street, East Peoria?

A. Yes, sir.

Q. How long have you lived there, Mr. Ashcraft?

A. Going on six years.

Q. And what work do you do there?

A. I worked at the trailer camp.

Q. Where is that trailer camp located?

A. 1245 West Washington, East Peoria.

Q. What's the name of that trailer camp?

A. Bay View Trailer Park.

Q. Who runs that place?

A. Roy Evans.

Q. Roy Evans? And how long have you been employed by him?

A. Since March of last year.

Q. And who employed you before that?

A. A fellow by the name of—I know his name, but I can't think of it right now. He run the park before. He run it before Roy took it over.

Q. And Evans bought this trailer camp from this other man, is that right?

A. He bought it off of the owners, Reeses.

Q. Reeses?

A. Yes, sir.

Q. Did Reeses run this before Evans ran it?

A. Yes, sir.

Q. You were employed by them?

444 A. No, the fellow just ahead of them. They never did run it themselves.

Q. I understand that now. Have you worked any place outside of that trailer camp for the last six years?

A. No, sir.

Q. Where did you work before that?

A. I worked for myself.

Q. What?

A. Peddling.

Q. Where?

A. Through the country selling vegetables.

Q. Where was your headquarters?

A. Well, I lived there six years.

Q. I know that, but where did you live before that?

A. I lived on Kerfoot Street, East Peoria.

Q. You lived on Kerfoot Street? What number on Kerfoot Street?

A. I think it was 225.

Q. Now, whom did you talk to about these matters that you have testified to here?

A. No one.

Q. Have you discussed it with either one of the attorneys for the plaintiff here?

A. No, sir.

Q. Did you discuss it with any representative from the T. P. & W.?

A. That was a man by the name of Cohen, I believe it is. He said he heard that I seen it. He come and asked me about it, and I told him what I seen. I didn't figure I would get into anything like this here.

Q. How far was this west-bound train from Washington Street when you heard the air go on?

A. Well, it's right close on Washington Street there.

Q. I can't hear that.



A. Probably fifteen feet.

Mr. Knoblock: Wait a minute! I can't hear you because there is other talking.

The Court: Read what he said there.

(Two preceding answers and question read.)

A. It's about fifteen feet from the car crossing.

Q. That is where you heard the air go on?

A. Yes, sir.

Q. You don't know who turned the air on, do you?

A. No, sir.

Q. It might have been some members of the train crew that turned that air on?

A. Yes, sir.

Q. As far as you know?

A. Yes, sir.

Q. When this running and fighting started over there, there was quite a crowd around there, wasn't there?

A. Quite a crowd gathered after it started, yes, sir.

Q. How many automobiles would you say was there?

A. I seen the one that this fellow was getting in.

Q. There was other automobiles besides that one?

A. I suppose. I didn't pay any attention. I noticed this one in particular.

Q. Wasn't there an awful lot of automobiles around there?

A. No, sir.

Q. You couldn't say whether there was more than one?

446 A. They was coming up Washington Street.

Q. Where were you standing when you saw this automobile?

A. Standing over in my yard.

Q. Where is your yard with reference to the fish market up there?

A. It's east of it.

Q. How far east?

A. Probably a hundred feet.

Q. Does your place front right on Washington Street?

A. Yes, sir.

Q. And then you were about a hundred to a hundred and fifty feet east of where the cab of that engine was when this started?

A. No, sir.

Q. How far east of it were you?

A. I wasn't east. I was west.

Q. You were west of the cab of the engine?

A. Yes, sir.

Q. How far?

A. A hundred and fifty feet.

Q. That would take you clear past the bridge? Wasn't it?

Mr. Heyl: I object to the argument.

Q. Would that take you past the bridge?

The Court: He may answer.

A. No, sir.

Q. How far would you say that engine was from that bridge?

A. From that bridge?

Q. Yes.

A. It was a hundred feet, hundred and twenty-five feet.

Q. It was a hundred to a hundred and twenty-five feet from the bridge, and you were a hundred and fifty feet from west of the engine?

447 A. This is directly across at an angle.

Q. I understand. I know where that place is over there: Now,—

Mr. Heyl: I object to what you know.

It is immaterial.

Mr. Knoblock: I will withdraw that.

Q. How close was that engine to the bricks on Washington Street?

A. Probably twenty-five feet.

Q. About twenty-five feet, and it was—You say you were a hundred and fifty feet west of the front end of that engine?

A. Yes, sir, the cab of it.

Q. The cab of that engine, and you still were not past the first portion of the bridge, is that right?

A. To my knowledge, it is.

Q. All right. Now, who else was there with you when this thing happened?

A. No one was with me.

Q. You were there alone, is that right?

A. Yes, sir.

Q. All right. You saw these men getting out the left side of the cab, is that right?

A. Yes, sir.

Q. How many did you see get out of there?

A. Four to five.

Q. Four or five of them? Did you see them all get out?

A. Well, I seen a good share of them. That might have been more than that, but I seen that many.

Q. Did they run toward the bridge?

A. No, sir.

448 Q. What direction did they run?

A. They ran probably southeast.

Q. Southeast? Would that be across Washington Street?

A. That would be across Washington Street, after they got across on our side.

Q. Did they get across on Washington Street to the south side there?

A. Yes, sir.

Q. Which men did that? Is that the man you picked up?

A. That man, and two or three other ones.

Q. They got across, to the south side of Washington Street, is that true?

A. That is true.

Q. How far was this man from the cab of the engine when they caught him?

A. Well, he was over in that gasoline station when they first caught up with him. I would say it was a hundred and twenty-five feet.

Q. From the cab of the engine?

A. From the cab of the engine.

Q. And he broke loose and continued on, is that right?

A. Yes, sir.

Q. How far did he get the second time?

A. Probably seventy-five feet.

Q. How far east was he from the cab of that engine?

A. He would be about two hundred feet.

Q. All right. And he was on the south side of Washington Street at that time?

A. Yes, sir.

Q. Now, from the time they got to him the second  
449 time, quite a crowd had gathered around there?

A. Not so many.

449 Q. How many would you say was there?

A. There was none up around them at the time.

Q. None at all?

A. Not up there. There was the men, about four of them, including this man.

Q. How many was around the cab of that engine?

A. None.

Q. None at all?

A. After they got out of it.

Q. How many people were there altogether at that time, would you say?

A. Of spectators?

Q. Yes.

A. Oh; I wouldn't know.

Q. What is your best judgment?

A. Probably twenty-five.

Q. Did several of the spectators stop in their automobiles there?

A. No, sir, not that I seen.

Q. They all kept on driving, is that right?

A. I couldn't say as to that. I wasn't watching automobiles.

Q. I see. And the only automobile you saw is this one automobile DuBois got in and got out?

A. I don't know if it was him that got out, but there was one.

Q. You don't know who the man was that got in and out?

A. No, sir.

Q. You don't know who he was connected with?

A. No, sir.

450 Q. How far were you away from DuBois when these gentlemen caught him the second time?

A. Well, I was down to my place. I didn't follow up there.

Q. How far would that be?

A. Well, that's a good two hundred feet.

Q. Well, did you stand about in the same place from the time you first saw this thing happen until they caught him the second time?

A. Yes, sir.

Q. You say DuBois was about two hundred feet east of the engine cab, is that right, when they caught him the second time?

A. Yes, sir.

Q. I thought at that time you told me you were a hundred and fifty feet west of the cab of the engine?

A. I was.

Q. You were almost three hundred and fifty to four hundred feet from him, isn't that right?

A. No, sir.

Q. You weren't?

A. No, sir.

Q. Did you remain about in the same place?

A. Yes, sir.

Q. Can you explain to me why you weren't three hundred and fifty to four hundred feet from him?

Mr. Heyl: I object to the argument.

Mr. Knoblock: I am not arguing. I am asking him to explain.

The Court: He may answer.

A. What was the question?

451 The Court: Will you say why you weren't three hundred and fifty to four hundred feet away?

A. Because on my judgment I figure it is two hundred feet on the angles.

Q. You were as close to him, that is, DuBois, as he was to the cab of the engine?

A. I imagine it is, yes, sir.

Q. And you were a hundred and fifty feet west of the cab of the engine?

A. On the angle.

Q. And he was two hundred feet east of the cab of the engine?

A. On an angle.

Q. All right! Now, what time of the day did this happen?

A. I would say close to 4 o'clock.

Q. About 4 o'clock in the afternoon?

A. I don't know just what time it was.

Q. There is a lot of traffic along there about that time?

A. There's quite a bit.

Q. A large portion of the shift of "Caterpillar" going to work?

A. There didn't happen to be at that time. They generally do.

Q. How do you know they didn't happen to be if you weren't watching any automobiles?

A. Well, there didn't happen to be that much traffic.

Q. How do you know there wasn't any traffic if you didn't see any automobiles?

Mr. Heyl: I object to that.

The Court: Sustained.

A. There was not much traffic there.

Q. You don't know who the men were that were chasing this man you have identified as DuBois, do you?

A. No, sir.

Q. You don't know if they were individuals connected with some other organizations or not than the T. P. & W., do you?

A. I wouldn't know.

Q. You never associated them with the T. P. & W. in any way or form, is that right?

A. Never.

Q. And you have been working there at this auto park for six years?

A. Trailer park?

Q. Trailer park.

A. No, I haven't. I have lived there going on six years. I didn't say I worked there that long.

Q. You have lived there six years?

A. Yes, sir.

Q. That's real close to where—to where the T. P. & W. trains cross the Illinois River, isn't it?

A. Yes, sir.

Q. You have had an opportunity to observe those crews go back and forth across that river every day for almost six years?

A. I do, but I never did pay any attention to them.

Q. You didn't get acquainted with any of them?

A. No, sir.

Q. Do you know Mr. Kipling?

A. No, sir.

Q. You don't? You say you worked there for six months, and lived there for six years?

A. I worked for this man since March, and I worked for the other fellow ahead of him from July until that March.

453 Q. Where did you work before that?

A. I worked for myself.

Q. That's right. When you saw this man lying down in the snow, where did these other men go?

A. I don't know which way they went.

Q. Do you have any idea of the direction they went?

A. No, sir.

Q. Can you tell us how they were dressed?

A. No, sir.



Q. Can you tell us whether or not they were bareheaded or had hats or caps on?

A. No, sir.

Q. Could you tell whether or not they had coats or sweaters on?

A. I imagine they had some on. It was kind of a chilly day.

Q. I am not asking you what you imagine, but if you recall seeing them.

A. Sure, I seen them.

Q. Do you recall whether they were dressed in overcoats or sweaters, or just what they were dressed in?

A. I didn't pay that much attention to them.

Q. Now, when did you first see this man with the nozzle in his hand?

A. Well, right up when they hit him up there where he fell.

Q. That is the first time you saw the nozzle, and you could see that in his hand clearly?

A. I could see it, yeah.

Q. And you couldn't tell which man had it, though?

A. No, sir.

Q. And how did you—What direction did he throw 454 it? Did he throw the nozzle?

A. No, I think it dropped out of the hand, slipped out of his hands.

Q. Slipped out of his hands?

A. Yes.

Q. Did you actually see him hit the boy with it?

A. I saw him swing with it. I can't say whether he hit him or not.

Q. Are you being paid a \$10.00 bonus for coming in here to testify?

A. No, sir.

Q. Did you see these men in the cab of the train prior to the air going on?

A. No, sir.

Q. You didn't see what they were doing?

A. No, sir.

Q. You only saw the activity around there concerning this one man that ran south, and about three fellows that were after him, is that right?

A. I seen them strike at the fellow that got in the automobile, and pulled him out, and then I concentrated

on this other fellow going up the other way I don't know if it was the same man that was pulled out of the car. As soon as it happened, why, then, I was watching this other one.

Q. Where did you go while this was going on?

A. I just stood there and watched it until it was all over.

Q. I see. How far would you say it is from where you are sitting to where Mr. DuBois is sitting?

A. That is fifty feet.

Q. Fifty feet? You had difficulty identifying Mr. DuBois at that distance in this court room, didn't you?

A. Yes, I did.

455 Q. It is well lighted in here, isn't it?

A. Yes, sir.

Q. You were able to identify him that day a hundred and fifty to two hundred feet away?

A. No, sir, I did not.

Mr. Heyl: I object.

The Court: He answered, said he did not.

Mr. Knoblock: That's all.

*Redirect Examination by Mr. Heyl.*

Q. You got close enough to pick him up after you found him unconscious on the road there?

A. When I went up there.

Q. He was unconscious, wasn't he?

Mr. Knoblock: I object.

The Court: Yes, sustained.

Mr. Heyl: That's all.

456 J. H. HEILMAN, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to:

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. J. H. Heilman.

Q. Where do you live, Mr. Heilman?

A. 131 South Eleanor Place, city.

Q. Peoria, Illinois?

A. That's right.

Q. How old are you?

A. Thirty-seven.

Mr. Knoblock: Was that 131 or 134?

A. 131.

Q. How long have you lived in Peoria?

A. Seventeen years.

Q. What is your business or occupation?

A. My business is chief dispatcher and yardmaster for the T. P. & W. Railroad.

Q. How long have you had that employment?

A. Well, I have been chief dispatcher and yardmaster for four years.

Q. What was your employment before that?

A. Prior to that, I was night chief dispatcher and night yardmaster for approximately six years.

Q. Were you riding on engine number 70 December 13, 1941?

A. December 31 I was.

Q. December 31, 1941?

A. That's right.

457 Q. Now, will you tell what happened while you were on that engine, and where?

A. Well, we had— Leaving the Peoria yard we had cars to deliver to the P. & P. U. Railroad. The delivery to the P. & P. U. Railroad was made without any incident, I might say. We also had cars to deliver to the Rock Island Railroad.

Q. Where was that delivery made?

A. Well, due to a more or less of a gentlemen's agreement, that delivery was made on what we know as the C. B. & Q. old house track.

Q. Which side of the river?

A. On the Peoria side of the Illinois River, and after making the delivery to the P. & P. U. Railroad we returned to our railroad, the main track, and picked up our cars that go to the—that were to go to the Rock Island, and after picking up the cars we proceeded westwardly to a point, what we commonly call the spillway, and at that particular point there was a series of rock throwing, attacks, you might say, on the locomotive. From there we went to the junction between Route 150 and West Washington Street in East Peoria, and at that point the air was set on the engine and the four cars that we had hold of.

Q. Was that air set while you were moving?

A. That's right.

Q. All right.

A. After that happened then, of course, we were unable to proceed, and momentarily rocks started to fly into the engine, knocking out the glass and the windows and so forth.

Q. From which side were they thrown? Which side of the engine?

A. Well, they were thrown from the north side of 458 the engine, or from Route 8. That's the hard road.

Q. That would be the right hand side?

A. That is the engineer's side, that's right.

Q. Go ahead and tell all that happened.

A. Well, after the attack started there at that point— You are concerned in what I did myself, is that right?

Q. And what you saw, yes.

A. Well, I didn't see anything because I was looking for my security. The attack was so severe that I got in behind the boiler head of the engine.

Mr. Knoblock: I object to the form.

The Court: I think his answer may stand, where he got in behind the boiler on his engine.

Q. Why did you get behind the boiler?

A. For safety.

Q. For what?

Mr. Knoblock: I object to the latter part.

The Court: Go ahead and answer. What were you afraid of?

A. I was afraid of the rocks which were coming through the windows of the engine—

The Court: Go ahead and tell what happened.

That is the question.

A. —and after the barrage of rocks subsided, I left the engine from the south, or the left side. The purpose of that was to call for some aid, and it so happened that I saw an acquaintance who was in the line of traffic on the hard road, and I stepped in his car, and then shortly after I stepped in the car one of the employees stepped in the car, and after

I had closed the door this young man came up, and he 459 opened the door and came in.

Q. Do you know that young man? Who was the young man?

A. Harley Widmer.

Mr. Knoblock: Who?

A. Widmer. Harley Widmer, W-i-d-m-e-r.

Q. Go ahead.

A. And following that, after this Mr. Widmer had gotten into the car, there was an attack on the car.

Q. Whose car was that?

A. Sir?

Q. Whose car was this that you are talking about?

A. The car belonged to— I just don't call that name now. The young man is in the room upstairs there.

Q. Robert Callender?

A. That's right, Robert Callender. The car belonged to him.

Q. What happened? What did they do to the car?

A. After the two of us were in his car, then there was an attack on the car.

Q. Did you see anyone? Recognize anyone who made the attack on the car?

A. I did.

Q. Whom did you see?

A. Mr. John Gimming.

Q. John J. Gimming?

A. That's right.

Q. One of the former employees of the railroad?

A. That's right.

Q. What did he do?

A. Well, he thrust a brake club through the front window of the car.

460 Q. That is, the glass?

A. Where I was sitting.

Q. What did he say?

A. Well, I don't know that he said anything.

Q. How did he do that? Describe that to the court, how he put the brake club through.

A. Well, I saw a certain—I saw a certain indication that he was going to put the brake club in through the window or make some sort of a motion with it, so I ducked.

Q. Well, did he break the glass?

A. That's right, he did.

Q. Then what happened after he broke the glass?

A. After he broke the glass, I told the young man, Mr. Callender, to proceed to the Union Station, and the purpose of that was to notify our officials of what had taken place. Mr. Widmer didn't care to go to the Union Station at the outset, so we took him to the Illinois Light Company on Jefferson Street and let him out, out of the car, and from there we went to the Union Station and

reported the incident, and from there we went back to the engine where it was still stationed at Washington Street and Route 8, and from there we proceeded down to the C. B. & Q. track and set out the cars that we had, and from that point, after getting enough steam to proceed, we returned the engine to the T. P. & W. yard.

Q. You knew what cars were in that train?

A. Yes.

Q. What cars were in that train?

A. Well, we had cars in the train for the Rock 461 Island. I think there were three cars of bottles for Hiram Walker, and I am not clear about the other load, the fourth load.

Q. Now, was this Harley Widmer that you said got into Mr. Robert Callender's car one of the occupants of that locomotive when it was stopped?

A. That's right.

Q. And an employee of this company?

A. That's right.

Q. Did he get out before or after you got off of the locomotive?

A. I was the first one off the locomotive.

Q. And you got off to go to a telephone to give the warning, is that it?

A. The purpose of getting off of the locomotive was to go to a telephone, but after getting off of the locomotive I noticed an acquaintance and, of course, I commandeered him to help me out in the matter of notifying someone as to what happened.

Q. Did you see some other cars there?

A. I did not.

Q. I mean automobiles on the road.

A. There were many automobiles there, that's true, yes.

Q. Did you notice any that were driven by any of the striking former employees?

A. I did not.

Q. Did you recognize any of the persons who were throwing the stones?

A. I did not.

Q. Did you recognize any of the former employees of the railroad around about where this transaction occurred?

A. No, sir, more than what I have already stated.

462 Q. John J. Gimming?

A. That's right.

Mr. Heyl: I think you may cross-examine.



*Cross-Examination by Mr. Knoblock.*

Q. You worked for the T. P. & W. about fourteen years, Mr. Heilman?

A. I have worked for the T. P. & W. twenty-nine years.

Q. Twenty-nine years?

A. Twenty-nine years and several months.

Q. And you have been chief dispatcher and yardmaster how long?

A. Well, I have been night chief dispatcher and yardmaster since 1930 to 1937, and I have been day chief dispatcher and day yardmaster from 1937 up to the present date.

Q. What were you before 1930?

A. Track train dispatcher.

Q. And how many years were you employed in that capacity?

A. From July 5 in 1920 to that date.

Q. What time did you go to work on December 31, 1941?

A. Well, I believe that I went to work about 6 A. M.

Q. Where did you report that morning?

A. I reported to the yard office in East Peoria.

Q. Was that your customary place of reporting in the morning?

A. That's right.

Q. And you have been reporting over there for how many years?

A. Well, I have been reporting over there for—That is, taking regular assignment since July 1 in 1937, I have been reporting there at 7:30 A. M.

Q. Well, Mr. Heilman, after this incident that 463 you have discussed here near the corner—I wouldn't say the corner, but the intersection there of the railroad and Franklin Street, did you cause any warrants to be issued?

A. No, sir.

Q. Did you call in or call upon any public officials or any law-enforcing bodies for assistance?

A. Are you speaking of Washington Street and Route 8?

Q. Yes.

A. No, sir.

Q. And, as far as you know, has the plaintiff ever called

any public officials or police officials for assistance on that occasion?

A. The plaintiff would be—

Q. That would be the T. P. & W. Railroad.

A. I have no knowledge.

Q. You have no knowledge of that?

A. No.

Mr. Knublock: That's all.

Mr. Heyl: That's all.

The Court: Call the next witness.

464 ROBERT CALLENDER, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Robert Callender.

Q. Where do you live?

A. In Pekin, Illinois.

Q. What is your business or occupation?

A. Yard clerk.

Q. Working for the T. P. & W.?

A. Yes, sir.

Q. And on December 31, 1941, at 3:30 P. M. where were you?

A. Down at West Washington Street.

Q. I didn't hear that.

A. West Washington Street crossing in East Peoria.

Q. What was your destination?

A. I was going over to the Union Station to get my pay check.

Q. Were you walking or driving?

A. Driving.

Q. Was there anyone with you?

A. No, sir.

Q. What happened as you came along?

A. I had to stop for some traffic behind some cars, and I saw this engine stop at the crossing, and pretty soon I saw a special agent trying to get through the traffic, and he couldn't get through, and I drove up and the door opened on the right side and the chief dispatcher jumped in and said, "Let's go."

465 Q. Is that John Heilman, the gentleman that just testified?

A. That's right.

Q. Did anyone else get in the car?

A. They didn't then, but they did afterwards.

Q. Where?

A. In the back seat.

Q. When?

A. Just after Mr. Heilman got in.

Q. After Mr. Heilman and the other men got in the car, what happened?

A. I started going toward Peoria, and about that time I saw a club coming at the window, and about that time I saw a car and I switched back and the club went through the right door window.

Q. What kind of a club?

A. A brake club.

Q. What is a brake club?

A. I guess it is hickory, sort of like a pick handle.

Q. How long is it?

A. About two and a half foot.

Q. How thick is it?

A. About two and a half inches thick at one end.

Q. What happened as a result of that throwing? Did it hit your car?

A. Yes, it hit the car, went through the window.

Q. Which window?

A. Right hand front door window.

Q. What happened to the window?

A. It shattered.

Q. And what happened to Mr. Heilman?

466 A. I guess he ducked. I didn't see him.

Q. Was he in the front seat?

A. Yes, sir.

Q. On the right side?

A. Yes, sir.

Q. Then what did you do?

A. I started on toward Peoria.

Q. Did you know the man who threw the club?

A. No, I didn't get a chance to see him. All I saw was the club.

Q. You saw someone out there, did you?

A. I seen someone out there.

Q. Did you have your car repaired?

A. Yes, sir.

Q. Where?

A. Earl Johnson, Chevrolet.

Q. When did you have it repaired?

A. Monday.

Mr. Knoblock: I object.

Q. When?

A. Last Monday.

The Court: He may answer.

Mr. Heyl: That's all.

*Cross-Examination by Mr. Knoblock.*

Q. Robert, how long have you worked for the T. P. & W.?

A. Oh, close to two years.

Q. Was there quite a few cars out there on the road when you came by on this occasion?

A. You mean on West Washington?

467 Q. When you stopped for traffic.

A. There was quite a few ahead of me.

Q. There was a considerable number of cars on the road right at that time?

A. Yes, sir.

Q. Going both directions?

A. I don't know about going both directions. They were going in one.

Q. Going, at least, in the direction you were going in?

A. Yes, sir.

Q. What time of the afternoon did you say that was?

A. Oh, a little after 3 o'clock.

Mr. Knoblock: That's all.

The Court: Call the next witness.

468 HARLEY WIDMER, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Harley H. Widmer.

Q. Where do you live?

A. Washington.

Q. That is Tazewell County, Illinois?

A. That's right.

Q. What is your business or occupation?

A. Car repair helper at the T. P. & W. Railroad.

Q. How long have you worked for the T. P. & W.?

A. Seven years.

Q. And on December 31, 1941, were you on engine 70?

A. That's right.

Q. What happened over at the approach to the Illinois River bridge near the Swords' Siding?

A. Well, we was coming along there. We stopped for a signal light of some sort for the bridge, and the air was turned on us some way, and we was all in the engine cab and rocks commenced to coming in there pretty lively, and I stayed there, I would say, two or three minutes, and I left on the left hand side of the engine.

Q. On which side of the engine were these rocks coming from?

A. They was coming from the river side.

Q. That would be the right side?

A. That's right.

469 Q. The opposite side from which you left the engine?

A. That's right.

Q. And after you left the engine, what did you observe outside of the engine?

A. I seen Mr. Heilman get into a man's car, and I followed him.

Q. You thought that would be a safe place for you, too?

A. I thought him being foreman of the engine, I would follow him.

Q. Did you see any other men around there chasing anyone?

A. No, I didn't; pretty busy getting away myself.

Q. After you got into this—by the way, do you know whose car it was?

A. I think it was Robert Callender's.

Q. Is that the boy that just preceded you on the witness stand?

A. That's right.

Q. What happened to that car after you got into it?

A. Well, there was a brake club came through the window.

Q. Did you see the man that threw the brake club?

A. No, I didn't.

Q. Did you see the club come in?

A. Yes, I did.

Q. What happened to the window?

A. The club came right on through it. It made a pretty fair-sized hole in the window, and the glass shattered in the car quite a bit.

Q. What happened to you and the rest of them that was in the car?

A. They took us over to town, and I got out at the Light Company and went on home.

Q. That is the last you had to do with the transaction that day, is that it?

470 A. That's right.

Q. Was Robert, your brother Robert, with you that day?

A. He was on the engine with us, yes.

Q. What happened to him?

Mr. Knoblock: Wait a minute!

Q. If you know?

The Court: What he saw happen to him? He may answer.

A. I never saw nothing. I left the engine.

Q. Is he here?

A. Yes, upstairs.

Mr. Heyl: That's all.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Widmer, you say you have been a car repair helper approximately seven years?

A. That's right, approximately seven years.

Q. Who all was in this engine cab on this date?

A. Well, I wouldn't know them by name.

Q. Well, you mentioned one man's name here awhile ago.

A. Robert Widmer. That's my brother.

Q. Did you mention another man?

A. Mr. Heilman.

Q. Do you know anybody else?

A. Wilson Hardy.

Q. Do you know anybody else in there?

A. No, I don't, not by name.

Q. Do you know who the engineer was?

A. No, I don't.



471 Q. Do you know who the fireman was?

A. Mr. Hardy.

Q. In what capacity were you acting in there?

A. Switchman.

Q. You were acting as a switchman? In what capacity was your brother acting?

A. Switchman.

Q. Did you see any special agents in there that day?

A. Yes, there was one.

Q. Was he armed with a gun?

A. I wouldn't know.

Q. You didn't see his gun?

A. No, I didn't.

Q. What time of day did you report for work?

A. 5 o'clock.

Q. Where at?

A. At the roundhouse.

Q. And how long had you been on engine 70?

A. That was the third—well, I wouldn't say that I was on engine 70, but that was the third day switching.

Q. This engine you spoke about having been stalled, wasn't that engine 70?

A. That's right.

Q. How long were you on engine 70?

Mr. Heyl: He answered it.

The Court: He answered, but answer it.

A. From 5 to about 3:15.

Q. About 3:15?

A. That's right.

472 Q. Where had you been that day on that train?

A. Well, we worked the yard, went to the P. & P. U., and coming back to deliver to the Rock Island and the "Q."

Mr. Heyl: A little louder.

A. We was coming back to deliver to the "Rock" and the "Q" at that time.

Q. You don't know who turned the air on, do you?

A. No, I wouldn't know.

Q. You have no idea who did it?

A. No.

Q. Now, you don't know who threw the rocks, either, do you?

A. No, the curtains was pulled on the cab then.

Q. And are you one of the men to whom a bonus of \$10.00 had been offered over and above your regular wages?

A. Yes.

The Court: I didn't hear you.

A. Yes.

Mr. Heyl: I didn't, either.

The Court: Speak up so we can hear. Counsel can't hear you and I can't, and we are just wasting time. Speak up. If you work as a mechanic, you ought to make more noise than this. What is the question, next question?

Q. Who offered that to you? Mr. Best?

A. Mr. Best.

The Court: Who?

A. Mr. Best.

Q. When you got out to the hard road there to Mr. Callender's car, there was quite a number of auto-473 mobiles there on the highway, wasn't there?

A. I wasn't paying a whole lot of attention to that.

Q. You wouldn't say there was, and you wouldn't say there wasn't?

A. No, I wouldn't.

*Redirect Examination by Mr. Heyl.*

Q. One question I would like to ask, and it may be direct and not redirect. Now, what were-

The Court: All right.

Q. What were the hours you were to work that day?

A. We started to work at 5, and I don't know when we should have tied up.

The Court: What?

A. We started to work at 5 that morning, and I don't know what time we was supposed to tie up.

Q. What is "tied up"?

A. Putting the engine away.

Q. Putting the engine away, and locking the doors, is that right?

A. That's right.

Q. After this happened over on West Washington Street, you quit for the day?

A. Yes.

Q. Why did you quit?

Mr. Knoblock: I object.

The Court: Yes, objection sustained.

474 ROBERT C. WIDMER, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Robert C. Widmer.

Q. Where do you live?

A. On Third Street, Peoria.

Q. Are you related to the young Mr. Widmer who just testified?

A. Yes, sir, brother.

Q. Were you on this engine 70 on the 31st of December, 1941?

A. Yes, sir.

Q. And did you observe anyone turning the angle cock?

A. I didn't see them do it, but the angle cock was turned.

Q. Did you see any former strikers of the T. P. & W. at the rear of the train?

A. At the rear?

Q. Yes.

A. No, I didn't notice any at the rear.

Q. Where did you notice them?

A. At the head end of the engine.

Q. And along the train?

A. Yes.

Q. Where is this angle cock?

A. Well, it's on both ends of cars. There is one on each end of each car.

Q. On each end of each car?

A. That's right.

475 Q. May it be turned off and on at each end?

A. The only way you could set the air, if you cut the air hose you would have to cut it at the end of the cut.

Q. And all of your crew that were on the train were on the engine,—

A. That's right.

Q. —is that right?

A. That's right.

Q. To work that angle cock, how would you have to do? What would you have to do?

A. Just turn the handle, just bring it around. It looks like an ordinary faucet, or anything like that.

Q. It is not automatic?

A. No, it isn't.

Q. You have to take hold of it to pull it?

A. That's right.

Q. When that angle cock was turned on or—then the train stops?

A. It dynamites your air.

Q. What is the result?

A. It sets all your air brakes, and it's impossible to pull your train.

Q. Does it set the air brakes on the engine, too?

A. Yes.

Q. What effect did the angle cock turning have to do on the train? What did it do with the train?

A. Just pulled the train to a dead stop.

Q. How fast was the train moving when it was stopped?

A. I imagine three miles an hour. We whistled for the board there.

476 Q. How do you know the angle cock was turned, and that the air brakes went on? Was there any outward sound beside the stopping of the train?

A. The only possible way the air could have got set off, either that or an air hose bursted, and there was no bursted air hose.

Q. Was there any notice?

A. Yes, it automatically sets your brakes up, and you can hear it.

Q. Did you hear it that day?

A. Yes, I heard it in the cab that day.

Q. When the engine came to a stop?

A. Yes.

Q. What happened around the engine?

A. Brickbats started coming in, and I was ducking brickbats.

Q. Did you notice the men that were throwing the brickbats?

A. I noticed some of them.

Q. What are their names?

A. I don't know their names.

Q. Are they former employees of the T. P. & W.?

A. Yes, sir.

Q. Do you see them at the back of the court room, back of this railing?

A. I don't know as I do or not. I don't believe I do right at the present time.

Q. Did you recognize those men, not by name but by reason of the fact they were former employees of the railroad?

A. Yes, sir.

Q. How many men were out there that you noticed?

A. Two.

Q. Did you notice others later than that?

477 A. Yes.

Q. How many?

A. I would say I noticed those two, and about three more after that.

Q. What were they doing?

A. Well, running.

Q. Away from you?

A. After me.

Q. Did they chase you?

A. Yes, sir.

Q. How far did they chase you?

A. I imagine about thirty feet.

Q. And then what did you do?

A. I jumped in a truck.

Q. And got out of there?

A. Yes, sir.

Q. Where did you go?

A. Peoria.

Q. Did you go back to work that day?

A. Yes, sir. Not that day; the next morning.

Q. Why didn't you go back that day?

Mr. Knoblock: I object.

The Court: Sustained.

A. Well,—

Q. Do you know whose truck it was that you got into?

A. It was a Peoria firm.

Q. Did you know the person?

A. No, I didn't.

Q. Did he invite you to get in?

A. No, he didn't.

478 Q. You just get on?

A. Yes, just got on.

Mr. Heyl: That's all.

*Cross-Examination by Mr. Knoblock.*

Q. Robert, what time did you go to work on the morning of December 30, 1941?

A. I believe it was 8 o'clock.

Q. 8 o'clock?

A. Yes, sir.

Q. And what engine did you go to work on?

A. I believe it was the 73. I am not sure.

Q. Engine number 73?

A. I believe. I am not sure what engine it was.

Q. Do you know what the number of the engine was you just described the location—the rocks were thrown at?

A. No, I don't.

Q. Was that the same engine you went to work on that morning?

A. The same engine I went to switch on.

Q. And your brother and the rest of the crew went to work at the same time you did, is that right?

A. Yes, sir.

Q. Where did you go to work that morning?

A. Where did I go to work?

Q. Yes.

A. In the switching yards at East Peoria.

Q. Now, who all was in the cab of that engine when this attack took place that you are talking about?

A. John Heilman, H. Widmer and myself, DuBois and Thielbert.

479 Q. I didn't get that last one.

A. Thielbert.

The Court: Who else, if you remember?

A. Two other men, but I don't know their names.

Q. Did you see one man in there carrying a gun?

A. No, I didn't.

Q. You had a special agent with you, didn't you?

A. Yes, Thompson was on that engine at the time.

Q. Did he carry a gun?

A. I never noticed no gun.

Q. You didn't see anybody turn the angle cock, did you?

A. No, sir.

Q. You don't have any idea who did it, do you?

A. No, sir.

Q. Now, was the same proposition given to you that



was given to your brother, that is, that you would get a bonus of \$10.00 a day above your pay while this goes on?

A. Yes, sir.

Q. Did Mr. Best offer that to you?

A. Yes, sir.

Q. He is the superintendent of the T. P. & W., is that right?

A. That's right.

Q. What was your job on the engine this day?

A. Pin puller.

Q. What?

A. Pin puller; switchman.

Q. Switchman?

A. Yes.

Q. And what was your work prior to this day?

480 A. Car repair helper.

Q. And you are still a pin puller now?

A. No, sir.

Q. You are back helping repair cars?

A. Repair track.

Q. You saw two men there, you say, throwing rocks, and you couldn't state their names?

A. No, I couldn't.

Q. And you haven't been able to see anybody in the court room you can identify as them?

A. No, I haven't noticed anyone.

Q. Now, you don't know into whose truck you jumped that day?

A. No, sir.

Q. And these three men that you say were after you, you don't know who they were?

A. No, I do not.

Mr. Knoblock: I think that's all.

The Court: Is that all with this witness?

*Redirect Examination by Mr. Heyl.*

Q. This bonus you have been asked about was for working, was it not?

A. That's right; for working in train service.

Q. To keep on working in train service?

A. That's right.

Q. Is that bonus off now while you are doing this other work?

A. I don't know.

Q. The bonus was given or offered in whatever  
481 train service you worked in?

A. That's right.

Q. There was no bonus offered you to testify in this  
case, was there?

A. No, sir.

Mr. Heyl: That's all.

The Court: I want to ask one question.

You were offered \$10.00 plus your switching wages, or  
plus your old wages?

A. Plus switchman's wages.

The Court: You were to get switchman's and \$10.00 a  
day?

A. Yes, sir.

482 WILSON H. HARDY, called on behalf of the plain-  
tiff, and having been first duly sworn, testified as  
follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Wilson H. Hardy.

Q. What is your age?

A. Twenty-nine.

Q. Where do you live?

A. Rural Route 6, Peoria.

Q. How long have you lived in Peoria or Tazewell  
County? Where do you live in Tazewell County?

A. Yes.

Q. Rural Route 6 is in Tazewell County?

A. Yes.

Q. How long have you lived there?

A. I have lived three years at that address.

Q. How long have you lived in this community?

A. Six years, going on seven.

Q. What is your business or occupation?

A. Now I'm a fireman on the T. P. & W. Railroad.

The Court: Fireman?

A. Yes.

Mr. Knoblock: On the T. P. & W. road?

The Court: Go ahead.

Q. Now, you were a fireman on 70 the day it was stopped  
over on West Washington Street?

A. That was the 31st?

483 Q. December 31.

A. Yes, sir.

Q. What happened to you after this engine was stopped?

A. I got off the engine, and got away from there.

Q. Where did you go?

A. I went over to town, over to Peoria here.

Q. Was there anybody hurrying you up in getting off the engine?

Mr. Knoblock: Objection.

The Court: Let him tell what happened. What happened?

Q. What happened? The whole story.

A. We got off and got in a passerby's car and went to Peoria.

Q. What happened before you got out?

Mr. Knoblock: Objection.

The Court: He may answer.

A. The engine was being stoned, and it looked like the thing to do was to get away from there.

Q. Is that what you tried to do?

A. That is what I tried to do.

Q. Did you return to the engine?

A. No, I didn't.

Q. You left the engine there, didn't you?

A. Yes.

Q. Do you know who carried you to Peoria?

A. No; I don't exactly. It was a panel truck belonging to either the Peoria Transcript or the Star. I don't know which of those it was.

Q. Did they invite you to get on?

A. No, they didn't. I opened the door and got in.

484 Q. And came on to Peoria?

A. That's right.

Q. And did not return that day?

A. No.

Q. And as far as—You do not know what happened to the engine after that of your own knowledge?

A. No, not of my own knowledge.

Q. Did you return to your work that day?

A. No, the next day.

Q. Did you have any injury as a result of what happened on the engine or what you were doing?

A. Yes, I had a slight burn on my wrist.

Q. How did that happen?

A. In the scramble to turn the blower off the engine.

Q. What is the blower?

A. That's a steam jet in the front end of the engine that lets steam into it to cause a forced draft.

Q. The engineer's station?

A. Not at the engineer's side; the fireman's side.

Q. In the front end of the engine?

A. This jet is in the front end of the engine.

Q. Where is the valve?

A. The control is on the fireman's side of the cab.

Q. That is in the rear of the engine?

A. Yes.

Q. What happened to that?

A. Well, I just turned it off before I left the engine.

Q. And, doing that, you burned yourself, is that it?

A. Yes.

485 Q. What did the rocks do to the engine, if anything?

A. They broke the windows out on the right hand side of the cab.

Q. And you left from which side?

A. On the left hand side.

Q. And how far did you have to go to get into this truck that took you to Peoria?

A. Oh, it wasn't over twenty to twenty-five feet. It was close to Washington Street there.

Q. Did you recognize any of the men that were throwing these rocks?

A. No, I didn't see any of those men.

Q. Any of them on the ground?

A. There wasn't any men on that side.

Q. On your side?

A. No, not at the time I left.

Q. As I understand it, this track comes into the center of a triangle made by two streets, is that right?

A. Yes; the state route on the north, and Washington Street on the south.

Q. As you come into the bridge, enter the bridge, the right hand side of the engine would be facing the hard road?

A. Yes.

Q. Extending to the Caterpillar Trail, and on to Washington?

A. That's right.

Q. And on the left side of the engine would be West Washington Street?

A. That's right.

Q. And you cross West Washington at that point where these two roads come together?

A. I didn't cross Washington Street.

486 Q. The railroad crosses West Washington at that point, does it not?

A. Yes.

Q. And the two roads come together and enter the east end of the bridge?

A. The Franklin Street bridge, yes.

Q. And you ran out the left side of the engine, and got into a car?

Mr. Knoblock: I object.

The Court: Yes, he testified to that.

The objection will be sustained.

Mr. Heyl: That's all.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Hardy, how long have you worked for the T. P. & W.?

A. Six years last September 10.

Q. And in what capacity have you been working there?

A. Well, I started as a laborer, and I have been car repair helper most of the time.

Q. You were a car repair helper immediately prior to December 31, 1941?

A. No, just prior to that I was working for Grafelman in the store department.

Q. Working for Grafelman in the store department? And then who asked you to change jobs on December 29?

A. Harlan Best offered me a job.

Q. And he offered you a bonus of \$10.00 over and above whatever the fireman's pay would be, is that right?

A. That's right.

Q. And, as I understand it, you did not recognize any of the boys there on this occasion?

487 A. No, I didn't.

Q. Did you ever have anyone arrested as a result of this—

A. No.

Q. —occasion you have spoken about over there?

Have you ever brought it to the attention of any public officials or law-enforcement officers?

A. No, I haven't.

Q. You never requested any law-enforcement officers to attempt to investigate the matter or do anything about it, is that right?

A. Yes.

Mr. Knoblock: That's all.

Mr. Heyl: That's all.

The Court: I think we will take a recess for about five minutes.

(Recess.)

488 WALTER COMPTON, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. State your name to the court.

A. Walter Compton.

Q. Where do you live?

A. Chillicothe, Illinois.

Q. What is your business or occupation?

A. Engineer.

Q. And how old are you?

A. Forty-nine.

Q. And how long have you been an engineer?

A. Twenty-four years.

Q. For what railroad?

A. A. T. & S. F.

Q. That is the Santa Fe, is it?

A. Yes, sir.

Q. And on December 31, 1941, were you an engineer on the T. P. & W.?

A. Yes, sir.

Q. And what run?

A. Extra east.

Q. From Peoria, Illinois?

A. Yes, sir.

Q. That is my mistake. It was January 1.

A. Extra west January 1.

Q. December 31 you were extra east 40,—

A. Yes, sir.

489 Q. —Is that right? And January 1, 1942, you were extra 40 west,—



A. Yes, sir.

Q. —is that right?

A. That's right.

Q. Now, on the day of December 31, '41, where did you start on your trip?

A. Peoria.

Q. And in which direction did you travel?

A. East.

Q. What was your destination?

A. Effner.

Q. Indiana?

A. Indiana.

Q. Did you travel to Effner, Indiana, that day?

A. Yes, sir.

Q. And then on January 1, 1942, about 8 o'clock in the morning you returned?

A. Yes, sir.

Q. And then the train was known as extra 40 west, is that right?

A. Yes, sir.

Q. Did you have any difficulties or unusual occurrences on the trip east?

A. No, sir.

Q. On the trip west January 1, what happened at Fairbury?

A. We were setting out grain cars, and when we returned out of the track we were setting the cars out in, the derail was thrown back on the rail.

Q. Do you know when that was thrown?

490 A. No, sir.

Q. Well, could you tell from your movement over the track when it was thrown?

Mr. Knoblock: I object.

The Court: He may answer.

Q. Before or after you moved in?

The Court: If he can tell, he can answer.

(Question read by reporter.)

A. It was thrown while we was in the track. Before we returned out on the track, it was thrown back on the rail.

Q. Do I understand you as you moved over this track it was not thrown?

A. It was thrown when we moved over it. Before we come out of the track, it was thrown back on the rail.

Q. That was the result of the derail?

A. The derail was on the track when we came out.

Q. As I understand it, when you went into the switch you took the derail off?

A. Yes, sir.

Q. So that the train would not be derailed?

A. Right.

Q. Is that right?

A. Right.

Q. You were coming back over that same track, were you?

A. Yes, sir.

Q. When you came back, what did you find with reference to the derail?

A. The derail was on the track.

Q. What would be the result of traveling over it?

491 A. Probably derailed the engine.

Q. Did you intend, when you went in there, to put the derail on after you came out?

A. After we had used the track, we would.

Q. But before you got out, did you intend to have it done?

A. No, sir.

Q. Where were your men and your crew? Where were the men that were with you at that time that this was thrown?

A. Spotting cars at the elevator.

Q. I can't hear you.

A. Spotting cars at the elevator.

Q. Did you see them while you were moving in and out?

A. I saw them while we was moving in, yes, sir.

Mr. Knoblock: I can't hear.

The Court: Speak louder, if you will.

A. I saw as we was moving in, took signals from them.

Q. Did either of these men go out to where the derail was when you were doing this switching?

A. No, sir.

Q. Did any of the men on your crew go out to the point on the rail or on the track where this derail was?

A. Not until after I stopped the engine.

Q. And why did you stop the engine?

A. Because the derail was on the track.

Q. When did you discover that?

A. While we were moving out.

Q. Which way were you traveling as you were moving out? Backing out or going forward?

A. We were going forward.

492 Q. Now, at that time did you see any automobiles traveling around in that vicinity?

A. I did not.

Q. What happened after you left Fairbury and came toward Peoria with that same train?

A. There was something thrown at the engine when we came through Washington, Illinois.

Q. Do you know what it was?

A. No, sir.

Q. Was there anything that happened to any of the windows?

A. No, sir.

Q. Anything happen at Farmdale?

A. Something thrown at the train, on the left hand side of the engine.

Q. Now, at Washington, which side did you receive the stones from?

Mr. Knoblock: Wait a minute!

The Court: He has testified something was thrown.

On which side of the train was it, if you know?

A. Both sides.

Q. What windows were broken?

Mr. Knoblock: I object.

The Court: Let him state what happened.

Were the windows broken around there?

A. Yes, sir, on the right side.

The Court: State what it was.

A. The windows on the right side.

Q. Of what?

A. Of the cab on the engine.

Q. That is, the cab on the locomotive?

493 A. Yes, sir.

Q. That is the side where you were?

A. Yes, sir.

Q. Did you see that window broken?

A. Yes, sir.

Q. Do you know how it was broken?

A. With some object thrown is all I know.

Q. Did you see the object later?

A. No, sir.

Q. Where did it go?

A. I don't know.

Q. Where did that occur?

A. Washington.

Q. That is in Tazewell County?

A. Yes, sir.

Q. On this railroad?

A. Yes, sir.

Q. And anything happen after that as you went by Farmdale?

A. There was something thrown at Farmdale on the left side of the engine.

Q. Was there any damage as a result of that?

A. No, sir.

Q. What portion of that train that you brought into East Peoria did you take at Effner? Were any of the cars you brought into East Peoria picked up at Effner?

A. I don't know anything about that.

Q. Well, when you started that morning, the engine and tender started at Effner?

A. The engine and tender and the way car.

494 Q. And that came all the way through, did it?

A. Yes, sir.

Q. And the same engine and tender started at Effner, Indiana, that you drove into East Peoria on that railroad?

A. Yes, sir.

Q. That same day?

A. Yes, sir; not the same day—the next day.

Q. On January 1 you returned to East Peoria?

A. Yes, sir.

Q. What time did you leave Effner that day?

A. 6:50, I think.

Q. And it was a continuous trip from that time on until you got to East Peoria,—

A. Yes, sir.

Q. —except for switching along the line?

A. Yes, sir.

Mr. Heyl: That's all.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Compton, how long have you lived in Chilli-  
cothe?

A. About thirty years.

Q. And when did you first go to work for the Santa  
Fe?

A. 1913.

Q. And how long did you remain in their employ?

A. About twenty-four years.

Q. When did you leave their employ?

A. 1937.

Q. And what was the reason for your leaving their employ?

495 A. Disobeying operating rules.

Q. What operating rule did you disobey?

A. I don't know.

Q. Could it have been Rule G?

A. No, sir.

Q. When did you first enter the employ of the T. P. & W.?

A. December 30, 1941.

Q. And had you been employed by any railroad company from 1937 until December 30, 1941?

A. No, sir.

Q. And what—Were you one of the men that was given a \$10.00 bonus besides your regular rate of pay?

A. Yes, sir.

Q. What was the regular rate of pay that was given you here on the T. P. & W.?

A. Well, as I understand, \$9.56 per hundred.

Q. And on top of a day's work, you got an additional \$10.00, is that right?

A. Yes, sir.

Q. You were to get an additional \$10.00?

A. Supposed to.

Q. And Mr. Best offered it to you, is that right?

A. Right.

Q. Now, he is superintendent of the road?

A. Yes, sir.

Q. You started from Peoria on December 31, 1941, on extra east 40, is that right?

A. Yes, sir.

Q. What time did you leave Peoria?

496 A. At 8:45.

Q. In the morning?

A. Yes, sir.

Q. And what time did you arrive in Effner?

A. 8:20 P. M.

Q. In the evening?

A. Yes, sir.

Q. Who was on that train?

A. You mean the crew?

Q. Yes, who was on that train?

A. I had a fireman by the name of Leasure, I believe.

Q. And who else?

A. Walker.

Q. Walker? What did he do?

A. He was supposed to be an instructor, I believe.

Q. He was an instructor?

A. Firemen.

Q. For the firemen?

A. Yes, sir.

Q. Well, did you have some student firemen on there?

A. I think Leasure was a student fireman.

Q. Any others?

A. No, sir.

Q. Who else was on there?

A. When we arrived at Effner, nobody. Nobody when we arrived at Effner; nobody was on there.

Q. You mean to say that all that was on your train was yourself and Leasure and Walker?

A. That was the engine crew.

497 Q. I want the whole crew. Who else was on there?

A. Well, the operating—The ones that operated the train, that's all that was on there, outside of the train crew.

Q. I want to know who the train crew was, too.

A. I don't know the train crew.

Q. You don't know who they were?

A. No, sir.

Q. Do you recall a man on there by the name of Smith?

A. No, sir.

Q. Do you remember a man on there by the name of Kane?

A. No, sir.

Q. Do you remember any special agents on there of any kind?

A. There was special agents on there, yes, sir.

Q. Do you know what their names was?

A. No, sir.

Q. They carried guns, didn't they?

A. I didn't see any guns.

Q. They weren't the regular special agents of the

T. P. & W., either, were they?



A. I don't know.

Q. There was a special agent's car that was driving along the highway, following your train, too, wasn't there?

A. I don't know.

Q. You wouldn't say there wasn't?

A. I wouldn't say.

Mr. Heyl: He said he didn't know.

The Court: He said he didn't know.

Q. Did you have a man on there by the name of Jacob Armstrong?

A. I believe he was the conductor. I am not sure.

498 Q. Did you have a man on there by the name of Handley?

A. I don't know.

Q. Did you have a man on there by the name of Douglas?

A. I don't know.

Q. Did you have a man on there by the name of McKinney?

A. I don't know.

Q. You never heard of McKinney in any way?

A. No, sir.

Q. Now, going over, your trip was completely uneventful, is that right?

A. Yes, sir.

Q. Coming back, you had no trouble or there was nothing eventful happened until you got to Fairbury?

A. Right.

Q. What time did you get into Fairbury?

A. I couldn't tell you the exact time.

Q. What is your best judgment?

A. Well, I didn't keep any report or anything, so I couldn't tell you. It was in the afternoon sometime.

Q. In the afternoon?

A. Sometime.

Q. It was daylight?

A. Yes, sir.

Q. What time did you get into Peoria that evening?

A. I believe it was around 10 o'clock.

Q. At night?

A. Yes, sir.

Q. How long did it take you to come from Fairbury to Peoria?

A. Well, sir, I don't know.

499 Q. What is your best judgment?

A. About eight hours.

Q. And how many miles is it from Peoria to Fairbury?

A. One hundred and eight.

Q. One hundred and eight miles?

A. From Fairbury to Peoria it's about fifty-eight miles, I would judge.

Q. And you consumed eight hours in that trip from Fairbury to Peoria?

A. Yes, sir.

Q. Now, you didn't see anyone go to that derail switch there in Fairbury after you had backed into it, did you?

A. I did not.

Q. And, as far as that goes, it may have been some of the members on your crew that handled it, isn't that right?

A. No, sir.

Q. You don't know where they all were, do you?

A. I know there was nobody ahead of us.

Q. You don't even know who the men on your crew were?

A. I do not, but I know there were no men that belonged on our crew.

Q. If you didn't know who your crew was, how could you tell?

Mr. Heyl: I object to the argument.

The Court: Yes. He said none of his crew was ahead of him.

Q. Somebody threw your switch, and you didn't see that?

Mr. Heyl: He answered that.

A. Yes.

500 The Court: He answered that.

Q. You don't know where all the members of your crew were while you backed into that switch, did you? You didn't have all of them in your sight, did you?

The Court: He may answer that.

A. No, I don't know where they all were; no.

Q. If you don't know where they all were, you wouldn't know what they would be doing, would you?

A. I knew where they were afterwards.

Q. Now, you say something was thrown through the windows at Farmdale and at Washington?

Mr. Knoblock: Where else did he say?

The Court: Washington.

A. Yes.

Q. You didn't see anybody throw anything, did you?

A. No, sir.

Q. And if anything was thrown, you don't know by whom?

A. No, sir.

Mr. Knoblock: That's all.

The Court: Is that all with this witness?

Mr. Heyl: That's all.

The Court: Have you another short witness or not?  
(Discussion off the record.)

501 W. A. WALKER, called on behalf of the plaintiff,  
and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. W. A. Walker.

Q. How old are you?

A. Fifty-two.

Q. Where do you live?

A. Forrest, Illinois.

Q. What is your business or occupation?

A. Engineer.

Q. How long have you been an engineer?

A. Since 1928 until 1934, when I was laid off.

Q. Did you enter the service again?

A. No, sir.

Q. Were you working for the T. P. & W. on December 30, 1941?

A. Yes, sir.

Q. And on December 31, 1931, were you on extra 40?

A. Yes, sir.

Q. December 31, 1941?

A. '41.

Q. And then were you on extra 40 west on January 1, 1942?

A. Yes, sir.

Q. What time did you leave Effner, Indiana?

A. 8 o'clock. 8 in the morning.

Q. What were you doing on that train?

A. Instructing the fireman.

502 Q. And where were you riding?

A. On the engine.

Q. Do you recall when that train reached Fairbury in the afternoon of that day?

A. Yes, sir.

Q. And did you do some switching at Fairbury?

A. Yes, sir.

Q. Where?

A. On four elevator tracks.

Q. And where are those four elevator tracks located?

A. Two on the south side of Main, and two on the north.

Q. Where are they located with reference to the station at Fairbury?

A. Well, there's two on the east side of the station, and two on the west side.

Q. Now, when you were making this switch, did you observe the switch—

A. Yes, sir.

Q. —at the derail?

A. Yes, sir.

Q. What happened when you got up to the switch as you went in?

A. We went into the elevator track and set out five cars, and coming out noticed the derail had been placed on the rail.

Q. Did you stop?

A. Yes, sir.

Q. Did you notice whether the switch was lined up—

A. Yes, sir.

Q. —then as it was when you went in?

A. Yes, sir.

Q. What would that indicate to one if you were watching the switch?

503 Mr. Knoblock: I object.

The Court: He may answer.

A. I just looked at the rail and seen the derail was thrown on it.

Q. What would the switch indicate if it was lined up?

A. It would indicate red.

Q. Did it indicate red?

A. Yes, sir.

Q. It was open?

A. Yes, sir.

Q. Where was the derail with reference to the switch?

A. It was about maybe a hundred, hundred and fifty feet from the switch.

Q. Which way?

A. East.

Q. Now, who were the members of the crew while the cars were being set in the switch?

A. Trainmen?

Q. Yes.

A. Armstrong, McKinney and a lad they call "Lindy."

Q. Those were the only ones?

A. They were the only ones that were there, I believe.

Q. Were they with you?

A. They were back doing the work on the ground.

Q. Where?

A. Setting out the cars back of the engine.

Q. That would be east or west?

A. East of the engine.

Q. Which way did you travel after you set out the cars—

A. West.

504 Q. —until you got to the derail?

A. Traveling west.

Q. Were any of these men you have named at all near this derail while you were switching these cars?

A. No, sir.

Q. Where was the balance of your crew?

A. I don't know. I guess the other fellows was on the caboose or flagging. I only seen three.

Q. Where did you leave the caboose?

A. East of the depot.

Q. How far east?

A. I don't remember.

Q. Was it some distance?

A. Not so far.

Mr. Knoblock: I object.

Q. Were they anywhere near the derail?

A. No.

Q. Have you any judgment as to the distance between the place where you left the caboose and the rest of the train and the derail?

A. Oh, three or four or five blocks, something like that, so far as I can figure.

Q. Did you or not see the men you left there with the caboose and the balance of the train when you went up to switch these cars?

Mr. Knoblock: I didn't get that question.

The Court: Read the question.

(Question read by reporter.)

A. All I saw was the trainmen that was working helping set the cars out.

505 Q. Now, after you went into this switch track with these cars to set out these cars, the switch was open then?

A. Yes, sir.

Q. That is, the track was open, is that right?

A. Yes, sir.

Q. The derail was off?

A. Yes, sir.

Q. Were any of your men at or near the place where this derail was located from that time until you returned and found the derail had been put back on?

A. No, sir.

Q. Was there any other engine or train over that track where that derail was located—

A. No, sir.

Q. —from the time you went in and came back and found it on?

A. No, sir.

Q. Any members of the crew there?

A. No, sir.

Q. Did any member of the crew throw the derail?

A. No, sir, I don't think they did because they was all back behind the engine working.

Q. What happened in Washington?

Mr. Knoblock: I object.

A. A few rocks was thrown.

Q. What is that?

A. A few rocks was thrown at the cab.

Q. Anything happen at Farmdale?

A. Same thing.

Q. Any windows broken?

506 A. I think there was a windshield and one window pane broken on one side at Washington.

Q. Of the engine?

A. Yes, sir.



Q. That was at Washington?

A. Yes, sir.

Mr. Heyl: That's all: Cross examine.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Walker, how long have you lived at Forrest, Illinois?

A. Since 1924.

Q. And what was the first railroad company you started to work for?

A. Minneapolis and St. Louis.

Q. What year was that?

A. 1907.

Q. How long did you remain with them?

A. About a year.

Q. What was the next railroad company you went to work for?

A. Illinois Central.

Q. When did you go to work for them?

A. 1910.

Q. How long did you work there?

A. There about four years.

Q. What type of work did you do on the Minneapolis road?

A. Fireman.

Q. What type of work did you do on the Illinois Central?

A. Fireman.

Q. You stayed on the Illinois Central until about what year?

A. 1914.

507 Q. Then what road did you go with?

A. Went to the M. & St. L. at Monmouth, Illinois.

Q. What year was that?

A. That was 1915.

Q. What type of work did you do there?

A. Fireman.

Q. How long did you work for them?

A. I was laid off in three months; got the board.

Q. When did you go to work for the railroad after that?

A. I went to the C. B. & Q.

Q. When did you go there?

A. I went there in 1916.

Q. What type of work did you do there?

A. Fireman.

Q. How long did you stay there?

A. '19.

Q. 1919?

A. 1919.

Q. What was the next railroad company you went to work for?

A. Santa Fe.

Q. What year did you go to work for them?

A. About September, 1922, until 1924.

Q. And what type of work did you do there?

A. Fireman.

Q. What was the next railroad company you went to work for?

A. Wabash.

Q. When did you go to work for them?

A. Hired there in 1924 as a fireman.

Q. How long did you work for them?

508 A. Until 1934.

Q. What was the next railroad company you went to work for?

A. T. P. & W.

Q. And you went into their employ on the 30th day of December, 1941, is that right?

A. Yes, sir.

Q. Are you also one of the men that has been promised a bonus of \$10.00 a day over and above your regular pay?

A. I was told I would get that.

Q. Mr. Best told you that, did he?

A. Yes, sir.

Q. What is your regular pay as understood?

A. Well, I don't thoroughly understand all the schedule yet. I understand it is \$9.56.

Q. You mean their schedule?

A. I think that is what it is.

Q. Have you studied that schedule quite a bit?

A. I haven't had a chance yet.

Q. You haven't had a chance?

A. No.

Q. You left Peoria. Wait a minute. You went to work on December 30, 1941, but you didn't go on this extra east until the next day, did you?

A. No.

Q. What type of work— What type of work did you do on December 30, 1941?

A. 30th?

Q. Yes.

A. The 30th I was held in, didn't go out at all.

509 Q. Now, how did you acquire the knowledge that there was positions open here on the T. P. & W.?

Mr. Heyl: I object to that as immaterial.

The Court: Oh, I think he may answer.

A. It was well advertised.

Q. And you went to work then? You actually went out on the run on the 31st?

A. 31st, 1941.

Q. What time did you leave?

A. Called for 6:30 in the morning, I think it was. I am not sure now. I don't have a time slip.

Q. Who was on that crew?

A. Engine crew?

Q. Yes.

A. Well, there was Walt Compton, myself and Russell Leasure.

Q. And who else was on the train crew then? I mean on the switching crew or the crew.

A. The conductor was Armstrong, brakeman, McKinney.

Q. The conductor was Armstrong, and who else?

A. McKinney, brakeman.

Q. McKinney was the brakeman?

A. Yes, and a lad they called "Lindy". I don't know his full name.

Q. What was his particular work?

A. Brakeman.

Q. And anybody else?

A. I don't know what the other fellow's name was. I never heard.

Q. Was that all on the train?

A. All outside of special agents.

Q. How many on the train?

510 A. One on each end, I think.

Q. They were both armed?

A. I think they were.

Q. You saw their guns, in fact?

A. Oh, yes.

Q. This switch at Farmington—

Mr. Elliott: Fairbury.

Q. —Fairbury, when you backed into that switch, you did not see its condition because you were at the other end of the train, wasn't you?

A. I was on the engine.

Q. You didn't see what the condition was?

A. I couldn't see it from the left side.

Q. You could see it?

A. I couldn't. It is on the nuorth side of the track.

Q. When you came out of there, or while you were in there, you don't know— You didn't see anybody about that derail, did you?

A. No, sir.

Q. How far were you from it?

A. Going in or coming out?

Q. After you got back there.

A. Several cars back of the derail at the elevator.

Q. How far would you say?

A. I can't judge it.

Q. Give us your best judgment.

A. About a block or a block and a half; something like that.

Q. What time did you get into Fairbury?

A. I don't remember that time.

511 Q. What is your best judgment?

A. It was in the afternoon sometime.

Q. Daylight?

A. Yes, sir.

Q. There wasn't anything to have obstructed your view in that one block or block and a half where the derail was?

A. No, sir.

Q. You didn't notice anybody around there?

A. No, sir.

Q. Nobody else in the cab you were riding made any remarks about anyone being around the derail, did they?

A. Not that I heard.

Q. With reference to the rocks at Washington and Farmdale, you don't know what was thrown, do you?

A. I do not.

Q. And you don't know by whom, do you, either?

A. I do not.

Mr. Knoblock: That's all.

The Court: Is that all with this witness?

Mr. Heyl: That's all.

The Court: We will stop at this point.

Trial Adjourned at 5:30 o'clock P. M.

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January 12, 1942.

Trial Resumed at 9:30 o'clock A. M.

Appearances:

Same as before.

Appearances: Same as before.

R. T. ASHBURN, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. R. T. Ashburn.

Q. Where do you live, Mr. Ashburn?

A. In East Peoria.

Q. Whereabouts in East Peoria?

A. At 300 East Washington.

Q. And what is your business or occupation?

A. Working at the T. P. & W.

Q. And how old are you?

A. Thirty-five.

Q. Were you a brakeman on extra 43 west, departing from the Peoria yard about 9:30 A. M. on December 31, 1941?

A. Yes, sir.

Q. And I will ask you if you observed any difficulty at Hollis, Illinois, west of Peoria on that run?

A. Yes, sir, I did.

Q. And about what time did that occur?

A. Well, that was about 10 o'clock. It was about 513 thirty minutes after we left out of the yards.

Q. Where were you on that train?

A. I was on the caboose.

Q. On the caboose?

A. Yes, sir.

Q. What did you observe?

A. Well, a lot of rock throwing.

Q. And do you know the source of those rocks? Where they came from?

A. Yes, they was coming from the highway, and all along the road.

Q. I didn't hear that.

A. All along the road.

Q. Can't you speak up a little?

A. Threw from the highway along the right-of-way along the highway as we went along.

Q. When you reached Hollis and the train stopped, what occurred?

A. There was a bunch of cars, and they started throwing from the box cars, top of the box cars, down into the cab, and all along.

Q. Did you receive any injury at that time?

A. Yes, sir.

Q. What injury did you receive?

A. Tooth, broken tooth.

Q. A little louder.

A. A broken tooth.

Q. What caused that?

A. From a rock.

Q. That was thrown at that time?

A. Yes, sir.

514 Q. Did you lose that tooth?

A. Yes, sir, knocked it out.

Q. Did you receive any other injuries?

A. No, sir; just the tooth.

Q. You were on the caboose of this extra 43 west when that occurred?

A. Yes, sir.

Q. Did you recognize any of the men who were throwing the rocks?

A. No, sir, I didn't.

Q. Was that stop made at the Peoria Terminal switch, or near there? Telephone—

A. I am not acquainted down through there. I am new, and it was—I know it was while they stopped in Hollis.

Q. It was the only stop you made after reaching the Allied Mills crossing until you got to Canton—or Glasford, wasn't it?

A. Yes, sir.

Mr. Heyl: Cross examine.



*Cross-Examination by Mr. Knoblock.*

Q. Mr. Ashburn, you say you are now living at 300 East Washington Street, East Peoria?

A. Yes, sir.

Q. How long have you lived in East Peoria?

A. About five months.

Q. Where did you come from before that?

A. I came from Texas.

Q. Texas?

A. Yes, sir.

Q. Did you work for a railroad down there?

515 A. No, sir.

Q. Had you worked for any railroad prior to going to work for the T. P. & W.?

A. No, sir.

Q. This is the first railroad work you had done, then?

A. Yes, sir.

Q. And in what capacity were you on this train on this particular day?

A. Brakeman.

Q. As a brakeman?

A. Yes, sir.

Q. When you were in Texas, what was the nature of your work?

A. I worked for the Borden Milk Company.

Q. Borden Milk Company?

A. Yes, sir.

Q. In what capacity?

A. As a truck driver delivering milk.

Q. When did you first go to work for the plaintiff in this case? On what day?

A. It was on Monday. I don't remember the date. It was—it has been two weeks today.

Q. Are you one of the men that has been offered a \$10.00 bonus over and above your regular rate of pay in this case?

Mr. Heyl: I object to the form of the question. It's indefinite, and the bonus was not for the case, but for work.

The Court: I think he may answer.

Were you or not?

(Question read by reporter.)

516 Mr. Heyl: I want to make the further objection that it assumes that the change in rate of pay related to this case, which is not the fact, and misleading.

The Court: I don't understand it does relate to this case, but is a matter of employment.

Mr. Heyl: It is a matter of employment, but has nothing to do with this case. They are not—

The Court: I think he may answer whether or not he was.

Did you answer?

A. Yes.

The Court: Were you or not?

A. Yes.

Q. Did Mr. Best, superintendent of the plaintiff, make that offer to you?

A. I really don't know which one it was. I talked to three different men when I was employed, and I really don't know which one did mention it.

Q. Did you talk to Mr. McNear?

A. No, sir.

Q. What is your regular rate of pay here?

A. I don't quite understand it, and I couldn't hardly tell you.

Q. Is your regular daily rate about \$3.36?

A. Well, it's regular schedule or regular wages.

Q. And on this particular day who else was in the caboose with you?

A. Well, there was the other brakeman, all new men, and I don't remember their names.

517 Q. Do you remember who they are now?

A. No, I don't.

Q. Do you know any of them?

A. No, I couldn't name any of them.

Q. Do you recall a man riding with you in the caboose that day that carried a gun?

A. No.

Q. Do you remember a man back there being a special agent?

A. No, there was two brakemen and one or two riding that was going to another town that had been looking for employment and didn't receive it, and I couldn't really say what they were.

Q. What time did you say you left the yards in East Peoria that morning?

A. Well, it was 'round about 9 o'clock.

Q. Where were you at 9:30, then?

A. Somewhere between the yards and Hollis.

Q. What brings it to your mind at this time that the date, the incident at Hollis, occurred on December 31?

A. Well, because I was new at the job, and I knew when I went to work.

Q. What day did you go to work there?

A. I went to work there—Let's see. It was on Monday. I don't particularly remember the date it was; about the 28th when I went to work.

Q. About the 28th?

A. Yes, sir.

Q. How long after you went to work did this incident at Hollis take place?

A. Well, I was in two runs down there on Wednesday and Thursday, and also Friday and Saturday.

Q. Now, did you have any experience on that day while you were going through East Peoria?

A. Have any experience at what?

Q. At anything eventful happening there.

A. Well, no.

Q. The first you noticed was when you got in the vicinity of Hollis, was it?

A. It was before we got there. It was all the way along the highway; after we left the yards, there was cars driving along the highway, and they would throw rocks and drive a little farther and start throwing rocks again.

Q. You recognized no one who was doing that?

A. No.

Q. How big a train did you have that day?

A. Several cars.

Q. About how many?

A. Well, I would say ten or fifteen cars.

Q. Were you on the train that day as a student brakeman or regular brakeman?

A. I started as student brakeman.

Q. Do you know who the regular brakeman was that day?

A. No, I don't know him by name.

Q. How long did you stop there at Hollis that day?

A. Well, I would say thirty minutes.

Q. And you were there about thirty minutes?

A. Yes.

Q. And do you know Mr. Carnarius?

A. Well, I know him when I saw him, yes, sir.

519 Q. And he was riding in the caboose with you as

you went into Hollis, and then he got off and later rode the rest of the way in the cab, is that right?

A. Yes, sir.

Mr. Knoblock: That's all.

The Court: Is that all?

*Redirect Examination by Mr. Heyl.*

Q. This bonus you referred to is so much per day for your services working for the railroad?

A. Yes, sir.

Q. And operating a train?

A. Yes, sir.

Q. That's right, isn't it?

A. Yes, sir.

Q. No one offered you anything to come here and testify, did they?

A. No, sir.

Mr. Heyl: That's all.

520 BERT TAYLOR, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Bert Taylor.

Q. And where do you live?

A. Hamilton, Illinois.

Q. How long have you lived there?

A. Around eighteen years.

Q. And what is your age?

A. Forty-seven.

Q. What is your business or occupation?

A. Well, fireman.

Q. And have you worked for the T. P. & W. Railroad in the past?

A. Yes, sir.

Q. How many years?

A. Around three years.

Q. And were you fireman on train number 43, extra west, on December 31, 1941?

A. Yes, sir.

Q. And riding in the engine with the engineer.

A. Yes, sir.

Q. —L. C. Ward?

A. Yes, sir.

Q. Now, will you tell the court in your own way what happened from the time you left the East Peoria yard until you reached Hamilton, Illinois?

521 A. Well, coming out of the yards we got bricked at East Peoria, and then down there just before you cross the bridge,—

Q. Illinois River bridge?

A. Yes, sir.

Q. All right! Go ahead!

A. —and then we got bricked at Canton and at Hollis.

Q. Now, at Hollis what happened? What did you observe there with reference to persons throwing bricks or stones?

A. Well, my engineer got hit with a brick.

Q. Did you see that?

A. Well, I never exactly seen it hit him, but he got hurt, anyhow, right there.

Q. Were you present?

A. Yes, sir.

Q. You mean you didn't actually see the contact, is that it?

A. No, sir.

Q. What did you observe, if anything, on his face? Observe anything on his face?

A. Well, I don't know as I did.

Q. Or his mouth after he got hit?

A. Not the engineer, I didn't.

Q. Well, how about the conductor?

A. The conductor got hit.

Q. Did you see that?

A. Yes, sir.

Q. That was Carnarius, wasn't it?

A. Carnarius, yes, sir.

Q. What did you see happen to him?

A. Well, his lip was bleeding. I suppose he got hit.

522 Q. Where was he?

A. He was in the engine.

Q. In the cab?

A. Yes, sir.

Q. Immediately before you saw his lip bleeding, what happened in the cab?

A. Well, about that time the engineer got hurt.

Q. What was happening? Can you tell what happened? Was there anything coming into the cab?

A. Oh, yes, sir.

Q. Tell us.

A. There were bricks coming in.

Q. What else?

A. That is all I know.

Q. How many?

A. I should judge there was around fifteen or twenty.

Q. Did you see the men that were throwing these into the cab of the engine?

A. Well, no, I didn't.

Q. Could you tell where they were coming from?

A. They was coming from the north side of the cab, right hand side.

Q. And you were on the east side of the cab?

A. Left hand side.

Q. That would be the left hand side, would it?

A. Yes, sir.

Q. Did you observe anything with reference to people traveling on the road that later stopped near your train?

A. Well, there were some cars out there, yes, but I didn't pay much attention because I was down in the cab myself. I got hit myself.

523 Q. Where did you get hit?

A. On the hip.

Q. What struck you?

A. I guess it was a brick.

Q. Then at Glasford did you have any difficulty?

A. Glasford?

Q. Yes, sir.

A. I believe not.

Q. How about Wheeler crossing? Do you know where the Wheeler crossing is?

A. Wheeler crossing is this side of Glasford, is it?

Q. Yes, beyond Hollis.

A. Yes, sir.

Q. Between Hollis and Mapleton?

A. Yes, sir.

Q. What did you observe there?

A. Well, there was some throwing done there.

Q. Did you notice any automobiles there?



A. No, sir.

Q. Now, you were on the left hand side all the time, were you?

A. Yes, sir.

Q. What happened to the engineer, L. C. Ward, at that crossing?

Mr. Knoblock: I object.

Q. If you remember.

The Court: If he saw it.

Anything happen to him that you saw?

A. Not as I saw, no, sir.

Q. East of the Mapleton water tank do you remember what happened there with reference to the engineer?

524 A. No, sir.

Q. Did you see the engineer get hit any other time?

Mr. Knoblock: Objection.

The Court: He may answer.

A. I believe not, no, sir.

Q. Now, on your return trip next day did anything happen as you approached East Peoria?

A. Yes, sir. There at the P. & P. U. cross-over we got bricked there, too.

Mr. Heyl: I think that's all.

The Court: Cross-examine!

*Cross-Examination by Mr. Knoblock.*

Q. How long have you lived at Hamilton, Illinois, Mr. Taylor?

A. Around eighteen years.

Q. And you have worked for the T. P. & W. about how long?

A. I should judge around three years, that is, up to this last time.

Q. When was that other three year period?

A. '26 to '29.

Q. And when did you go to work for them this last time?

A. The 30th.

Q. 30th of December, 1941?

A. Yes, sir.

Q. And were you also offered a \$10.00 bonus over and above your regular rate of pay during this situation?

A. Yes, sir.

Q. Did Mr. Best offer that to you?

A. Well, now, I don't know as he did, but they  
525 were saying over there we was to get \$10.00, that's all.

Q. And on this day in question who was the engineer of the train?

A. Larry Ward.

Q. And who else was in there besides you and Larry Ward?

A. There was Larry Ward and myself, and a brakeman or two.

Q. Do you know their names?

A. No, I don't.

Q. Who else?

A. And Ernie Lawson.

Q. Who else?

A. There was a guard, but I couldn't tell you his name.

Q. I didn't hear that.

A. There was a guard, but I couldn't tell you his name.

Q. Did he carry a gun?

A. I think so, yes, sir.

Mr. Heyl: I object, and ask to have it stricken unless he saw it; no guessing about it.

The Court: Yes, it may be stricken.

Read the question again.

(Question read by reporter.)

The Court: Answer it "yes" or "no."

A. Yes.

Q. There was yourself, Ward, Lawson, two brakemen and a guard and who else?

A. Well, that's all I can remember.

Q. What brings it to your attention that this occasion at Hollis occurred on the 31st of December? How do you place it on that date?

A. Well, I don't quite get that, but it was the 30th  
526 we went west, and we came back the next day.

Q. You went west on the 30th of December?

A. Yes, sir.

Q. Well, you say it was the 30th of December, 1941, when Ward was the engineer of the train going west?

A. Yes, sir.

Q. And you were the fireman?

A. Yes, sir.

Q. You couldn't be mistaken about the date, could you?

A. How's that?

Q. You couldn't be mistaken about that date, could you?

A. No, I think not.

Q. Where did you go west on the 30th? Where did you go from and go to?

A. We went from the East Peoria yards to Hamilton.

Q. Then you came east on the 31st, is that right?

A. Yes, sir.

Q. And you came from Hamilton—

A. To the East Peoria yards.

Q. —to the East Peoria yards—

A. Yes, sir.

Q. —on the 31st?

A. Yes, sir.

Q. You didn't come back on January 1? Is that right?

A. Well, I wouldn't be right sure about it.

Q. Did you lay over in Hamilton two days?

A. It was the following day we came back.

Q. Now, you say that when you came out of the yards, and also at the Illinois River bridge, there were some 527 bricks thrown. You didn't see who threw them, did you?

A. No, sir.

Q. And did you see Larry Ward thumb his nose at some of the men along the highway that day?

A. No, sir, I did not.

Q. Did you hear him yell at one of the men, "How do you like it?"

A. No, sir.

Q. Did you hear him yell to one of the men, "Why don't you come and get me?"

A. No, sir.

Q. Did you do any of that stuff yourself?

A. I did not.

Q. You didn't shake your fist at them, is that right?

A. No, sir, I didn't.

Q. You didn't see anyone else in the cab do that?

A. No, sir.

Q. You didn't have your eyes on Ward all the time, did you?

A. No, sir.

Q. Now, when you got to Hollis, how long did you stay there?

A. At Hollis?

Q. Yes.

A. Well, we wasn't there so very long. I should judge around five minutes, maybe not that long.

Q. And where was Mr. Carnarius when you pulled into Hollis?

A. He was in the engine.

Q. He was in the engine?

A. Yes, sir.

Q. You are sure he was not in the caboose, and that  
528 he joined you at the engine?

A. I think not.

Q. Who got out of the cab there at Hollis, if anybody?

A. I don't think there was a soul got out.

Q. None of them got out?

A. No, sir.

Q. Now, it was at Hollis, was it, that you saw the blood on Mr. Carnarius's lip?

A. Yes, sir.

Q. You didn't see it, but Engineer Ward was hit, is that right?

A. Yes, sir.

Q. Whereabouts was the engineer, Ward, hit at Hollis?

A. He was hit in the stomach, I believe.

Q. I see. Now, you say about fifteen or twenty bricks came in there?

A. Yes, sir.

Q. You don't know who threw them?

A. No, sir, I do not.

Q. You didn't see anybody throw them?

A. No, sir.

Q. You couldn't recognize anybody?

A. Well, I believe not.

Q. And at Glasford you had no trouble there?

A. Glasford?

Q. Yes.

A. No, sir.

Q. And at Wheeler crossing there was a little throwing there, was there?

A. Yes, sir.

529 Q. But no one was hit there, is that right?

A. No, sir.

Q. Then you came back on December 31, you say?

A. January 1 it probably was instead of the 31st. I wouldn't be sure.

Q. Do you know which day it was that you went west?

A. It was on the 30th of December.

Q. And you came back the following day?

A. Yes, sir.

Q. That would be the 31st, is that right?

A. Yes, sir.

Q. And you never had any unusual experience until you got to the P. & P. U. cross-over in East Peoria, is that right?

A. That's right.

Q. Who threw the bricks—

A. I couldn't tell.

Q. You couldn't tell us, and you never saw anybody? You never saw any actual throwing?

A. I saw some fellows, but I couldn't tell you who they were.

Mr. Knoblock: I see. That's all.

*Redirect Examination by Mr. Heyl.*

Q. Mr. Taylor, when did you start to work for the railroad this last time?

A. This last time? The 30th of December.

Q. The 30th of December?

A. Yes, sir.

Q. You didn't go out that day, did you?

530 Mr. Knoblock: I object; leading.

The Court: He may answer.

Q. Which was the first trip that you made?

A. The 30th of December, I am sure.

Q. Was it the last day of December?

Mr. Knoblock: I object.

The Court: Let him answer.

Q. Where were you New Year's Eve?

A. New Year's Eve I was over in the yards there.

Q. Where?

A. The T. P. & W. yards.

Q. You are sure of that, are you?

A. Yes, sir.

Q. How many trips did you make on the road before you made this trip to Hamilton?

A. That was my first trip.

Q. That was your first trip?

A. Yes, sir.

Q. Is that the day you were employed, or the following day?

A. I believe it was the following day.

Q. You were employed December 30, weren't you?

A. Yes, sir.

Q. On Tuesday?

A. Yes, sir.

Mr. Knoblock: I object.

The Court: There isn't much question about when the train left. I didn't think there was much. I thought we were losing time, and that is the only thing I am bothered about.

531 Mr. Heyl: That's all.

The Court: I didn't think there was much question about when this train left.

Q. You said something about a \$10.00 bonus. Was that a bonus for service in operating the trains? Is that what you were to get paid for?

A. I couldn't tell you about that.

Q. All you heard was some talk over there?

A. That's right.

Q. No official of the company said anything?

A. I never heard any official say anything.

Q. Nothing to you in your presence?

A. No, sir.

Q. All you heard was what the men said in your presence?

A. Yes.

Mr. Knoblock: I object.

The Court: Yes, sustained.

Q. What did you do prior to '29?

A. '29? Everything.

Q. When you worked for the railroad, what did you do?

A. In 1929? Fired.

Mr. Knoblock: I object.

Q. How long did you fire?

A. Around three years.

Mr. Heyl: That's all.

The Court: That's all. Call the next witness.



533 LINDEL DOUGLAS, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Elliott.*

Q. You may state your name.

A. Lindel Douglas.

Q. Where do you live?

A. At 202 Arnold, East Peoria.

Q. What is your age?

A. Twenty-eight.

Q. What is your business?

A. Railroad business.

Q. Were you a brakeman on extra 40 east departing from the Peoria yard December 31?

A. Yes, I was.

Q. And where did that train run from and to?

A. It ran from Peoria to Effner.

Q. And were you on extra 40 west the next day coming back, January 1?

A. Yes, sir, I was.

Q. Were there any unusual occurrences on the train going east?

A. There were none going east.

Q. And as you started back toward Peoria from Effner, did you stop at Fairbury?

A. Yes, we did.

Q. Tell what, if anything, occurred at Fairbury.

A. At Fairbury?

Q. Yes.

533 A. We switched five cars in on the north elevator track for feed loading. After we had switched these cars in, and thrown the switch and thrown the derail to go in and set the cars out, coming out the derail was thrown behind us.

Q. Where were you located with reference to the cut of cars that was set in by the elevator?

A. We backed in the siding, and I was on the rear end.

Q. Would that be the east end?

A. Yes, sir.

Q. Were you the one that threw the derail off of the rail?

A. I threw it off going in, yes, sir.

Q. And where were the rest of the crew?

A. Why, they were all riding the tender coming out of the switch.

Q. From the time you moved in there after starting out, were there any members of your crew near this derail?

A. No, there wasn't.

Q. What did you discover with reference to the derail as you started out west from the switch track?

A. We found the derail thrown back on the rail.

Q. Had any member of your crew thrown that derail?

A. No, they hadn't.

Q. Did you see any of the defendants about that time in that vicinity?

A. I saw Garland Brown.

Q. Garland F. Brown?

A. Yes, sir.

Q. Where did you see him?

A. He was about one block west of the station, or one block west of the elevator.

534 Q. Was he in any conveyance at that time?

A. He was in his car crossing the track.

Q. Was there anyone with him?

A. No, sir.

Q. You have known Garland Brown for sometime?

A. Since he started for the railroad.

Q. Well, for how long?

A. For the last two or three years.

Q. Have you worked for the railroad about that length of time?

A. I have worked there for about twelve years.

Q. And you have known him for three years?

A. Yes, sir.

Q. On your way from—As you came out of the track there at Fairbury, did your train continue on west toward Peoria?

A. Yes, we continued on.

Q. What, if anything, occurred between Fairbury and Peoria?

A. We had a few stones thrown at us at Washington.

Q. What, if any, effect did the throwing of those stones have upon the engine?

A. It broke glass on both sides at Washington.

Q. From which direction were those stones thrown?

A. They were thrown from the depot at Washington.

They weren't thrown from the other side, just from the depot side. That was the left hand side coming in.

Q. Where were you riding?

A. I was riding on the engine on the left hand side.

Q. Then you continued on to Peoria?

A. Yes.

Mr. Elliott: You may cross examine.

535

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Douglas, you say you are twenty-eight years of age?

A. That's right.

Q. And how long have you lived in East Peoria?

A. Oh, since—About two years, two or three years, something like that.

Q. You say you have worked for the railroad twelve years?

A. I started in 1928; July 4, 1928.

Q. And for what road?

A. For the T. P. & W. Railroad.

Q. And you have been with them ever since, is that right?

A. Yes.

Q. Now, prior to, say, January 25, what was your job—1941? What was your job at the railroad?

A. What year?

Q. 1941.

A. 1941, January 25? I was a lead laborer.

Q. Lead laborer, is that right?

A. Yes.

Q. In what capacity were you acting when you were going on this extra 40 east December 31, 1941?

A. I went out as head brakeman, and came back as rear brakeman.

Q. You went out as head brakeman, and came in as what?

A. Rear brakeman.

Q. I see. When were you promoted to the brakeman job?

A. On December 29, 1941.

Q. And were you also one of the men who was promised a bonus of \$10.00 a day—

A. Yes, sir.

536

Q. —extra over and above your regular rate of pay?

A. Yes, that's right.

Q. Who offered that to you? Mr. Best?

A. Mr. Best, and some of the officials I talked to.

Q. What is your regular daily rate over there?

A. \$7.00.

Q. \$7.00? Did you go out as an apprentice or as a full-fledged brakeman?

A. As a full-fledged brakeman.

Q. Now, on your way to Effner on December 31, you say there was nothing unusual happened, is that right?

A. That's right.

Q. Who all was on this train?

A. I couldn't tell you all.

Q. Who was your engineer?

A. Ernie Funk.

Q. Ernie Funk was the engineer?

The Court: Go ahead and name them as fast as you can.

Q. Was he the only one that was engineer on this trip?

A. Yes, he was.

Q. Who else?

A. The fireman I do not recall (he was out of the engineering department), and Paul Avery was one of the brakemen.

Q. Paul Avery?

A. Yes, sir, he was pilot (you would call him "pilot"), and then we had another brakeman (I don't know his name), and our conductor was—

Q. Who was the conductor?

537. A. I am trying to think. Most of these fellows were out of the office, and I don't know them so well.

The Court: Who else?

A. I don't recall now. I know him real well, but I don't recall his name.

The Court: Go ahead.

Q. Anybody else?

A. I can't recall those other fellows' names. I know them, but right at the minute I can't think of their names.

Q. Did you have any men on that train carrying guns that day?

A. No, I can't recall of anyone carrying guns there.

Q. Did you have some special agents on the train?

A. Let's see. I imagine we did. I don't believe we have had a train out yet we haven't had special agents on, but I don't recall how many or who was on there now.

Q. Now, you say you stopped at Fairbury. What time of the day did you stop there?

A. After dinner sometime.

Q. What is your best judgment?

A. Oh, I would say 1:30, 2 o'clock.

Q. And tell us where you spotted these cars.

A. At the north elevator. It's west of the depot, and on the north side of our tracks there.

Q. Were you the one that threw the derail off as you backed into this switch?

A. Yes, I was.

Q. Was anybody back there with you at that time?

A. Our conductor was there.

Q. Who was that?

538 A. Oh, Armstrong was his name.

Q. Are you sure that R. F. McKinney didn't throw the derail off as you backed into it?

A. I am pretty sure I threw it. I was watching the road crossing (it was about twenty feet), and I protected that crossing.

Q. R. F. McKinney was on the trip that day?

A. Yes, he was our pilot.

Q. When did you see Garland Brown?

A. Why, when I was protecting the road crossing, he went across it.

Q. He wanted to cross?

A. He went on across as I was there protecting the road crossing.

Q. What kind of a car was he driving that day?

A. No, I couldn't tell you what kind he was driving that day.

Q. Was anybody with him?

A. No.

Q. He was alone?

A. Yes, sir.

Q. You never saw him near that derail?

A. No, I never saw him. We hadn't gone into the switch with our cars yet.

Q. You didn't see Garland Brown do anything that day of a threatening or offensive nature that day?

A. No, sir.

Q. After that derail was thrown, you have no idea who did it?

A. No, sir.

Q. You had seven, eight or nine men on the crew?

A. I think so.

Q. You don't know where all the men were when you were switching?

A. I knew where the switchmen were. The train 539 crew were on the engine, and we were on the ground.

Q. You didn't see them? You thought they were up there?

A. Taking care of their duties.

Q. That is just your assumption?

A. Yes.

Q. You don't know what they were doing, or where they were?

A. I am pretty sure.

Q. That is your assumption; is that right?

A. Yes, sir, that's right.

Q. Now, when you came back, you say you got some rocks at Washington, Illinois, is that right?

A. That's right.

Q. You don't know who threw those?

A. It was dark when we were going through Washington.

Q. That was the only place, outside of Fairbury, that you noticed anything that occurred?

A. We had a few rocks thrown at us at Farmdale.

Q. I see. What was your job on this date did you say, again?

A. As a brakeman.

Q. Where did you ride on the train?

A. Going out—Coming back in from Effner, I was the head brakeman, riding the engine.

Q. I understood you to say on direct examination that on December 31, on extra 40 east, you were the head brakeman, and on extra 40 west on back on January 1 you were the rear brakeman?

A. When I went out, I was—Let's see. You have got me all mixed up. As I went out, I was the head brakeman, and as I came back I was the rear brakeman.

Q. Where did you ride as rear brakeman?

540 A. As rear brakeman I should have been on the caboose.

Q. Where were you?

A. I was in the engine. I was off of my position. We new men change back and forth, and I happen to know the man working as head brakeman was riding in the caboose at that time.



Q. Who was that man?

A. Hadley, I believe, is his name.

Q. Hadley?

A. Yes.

Q. Now, did you see Garland Brown at Fairbury excepting on this one occasion when he crossed over the tracks?

A. That is the only time I have ever seen him anywhere.

Q. You never saw him stop his car around that way?

A. No, sir.

Q. He was continuing on his way, so far as you know?

A. He was going across the crossing when we came out there.

Q. How far east of the derail did your train back into this switch track?

A. A good block.

Q. That is, from the rear of the train to the derail, or from the engine to the derail?

A. We set our cars about one block from the derail.

Q. The engine would be closer to the derail than you were?

A. Yes, sir.

Q. Because you backed in?

A. Yes, I was with the cars going in.

Q. How far would you say the head of the engine car was from the derail as you spotted those cars?

A. We just went across a crossing to set the cars, 541 so it was about one block even, the engine was.

Q. About one block?

A. Yes. The cars were set just across the crossing.

Q. And the view from where you were to the derail was unobstructed, wasn't it?

A. By the cars and engine. I was behind those.

Q. I understand that, but anyone sitting in the engine, there was nothing to obstruct their vision?

A. No, they should have seen anything going on.

Q. It was broad daylight?

A. Yes.

Q. Have you gone out on any other runs outside of this one you have described as December 31 and January 1?

A. I have been running regular east, yes.

Q. When was the last run that you made east?

A. I went east on Thursday of this last week.

Q. Anything happen on those occasions?

A. Nothing has happened.

Q. And, as far as you have been able to observe, you have seen no one whom you would identify that has made any threatening gesture or threat of any kind or character toward you?

A. None since I have been working.

Q. Did you—after these runs, did you report these incidents to the police?

A. No, sir.

Q. Did you report it to any public officials or law-enforcement officers?

A. No, sir.

Q. You have never requested the investigation by any law-enforcement officers or by any policeman?

A. No, I have not.

Q. You haven't asked their aid or assistance in any way?

A. No, I haven't been off of the T. P. & W. for two weeks.

Q. What?

A. No, I haven't been off of the T. P. & W. for two weeks, so I know I haven't talked to anyone.

Q. The last trip that you went on you said was Thursday of last week?

A. It took us two days to go to Effner; Thursday and Friday.

Q. Who was the special agent on your train that day?

A. I don't know. We had one fellow going out, and a different fellow coming back.

Q. Did you see the guns that they carried?

A. No, sir, I did not.

Mr. Knoblock: That's all.

*Redirect Examination by Mr. Elliott.*

Q. Mr. Douglas, I understood you to say you saw Mr. Garland F. Brown before you backed in on this switch?

A. That's right.

Q. Where was he with reference to the street west of the depot when you saw him?

A. He crossed the street right next to the derail. The derail is not more than twenty foot from the street crossing.

Q. You saw him before you backed in?

A. That's right.

Q. You threw the derail as you went in?

A. Myself, yes. I was the closest to it.

543 Q. And you came back to the engine after you set the cars, and were on the engine as you came out?

A. Yes, sir.

Q. Is that when you noticed the derail had been put on?

A. The engineer noticed it, yes.

Q. Tell us just how you threw the derail. Tell us what you do.

A. It is a regular hand switch—hand switch. You have to throw, turn the handle.

Q. And that throw the derailing device off of the rail?

A. That's right.

Q. And in order to put the derailing device back on the rail, some force has to be used?

A. Some force has to be used, yes.

Q. Is that the switch that controls the rails going in, or is it different?

Mr. Knoblock: I object.

The Court: Yes, sustained.

Q. Where is this derail with reference to the switch points?

A. Well, it must be a couple of hundred feet from the switch point.

Q. Is it controlled by the same or a different switch?

A. Different switch.

Q. How much force does it take to throw the derail off or on the rail?

A. About a sixty pound pull.

Q. I understood you to say that you worked last week, and went to Effner and back.

A. That's right.

Q. You had no trouble at all at that time?

A. No trouble.

544 Q. There has been no trouble on any of the runs since a week ago Saturday, is that it?

A. That's right.

Mr. Elliott: That is all.

*Recross Examination by Mr. Knoblock.*

Q. You say you saw Garland Brown pass near the derail, but he didn't stop, did he?

A. That's right.

Q. You handled the derail after you saw him, didn't you?

A. That's right.

Q. And on this trip do you recall a man in the cab of the engine by the name of Compton?

A. I don't know any of the new men we have out there.

Q. Do you know whether he was the engineer, or whether Ernie Funk was the engineer, on that trip?

A. I couldn't tell you that at all.

Q. Didn't I understand you to say Ernie Funk was the engineer?

A. He was on the first trip I made out the 31st. This happened on the 1st of January, this trip when the derail was thrown.

Q. I understand that, but I am asking you on the way out whether Ernie Funk was the engineer, or whether Compton was the engineer?

A. I couldn't tell you now who was on there.

Q. Did I understand you correctly on direct examination to say Ernie Funk was the engineer going out?

A. He was on the first trip I made on the 31st.

Q. He was the engineer on the first trip?

A. Yes. He must have been coming back, because he had to be.

545 The Court: Anything else with this witness?

Q. Do you know Funk?

A. Very well. I have known him for fifteen years.

Q. Funk was in the cab at Washington, too, wasn't he, coming back?

A. He had to be; I guess.

Q. Do you recall him being in there coming back at Washington?

A. I do not recall now who we did have in there.

Q. Do you recall at Washington who was driving the train?

A. It had to be Funk if he went out.

Mr. Heyl: I move it be stricken.

The Court: It may be stricken.

Do you know who was driving the train at Washington?

A. We had the regular engineer who was learning.

The Court: I am not asking what you had, but who was the engineer at Washington driving the engine. Do you know?

A. I do not know.

The Court: Is that all? That's all.

546 AUGUST E. STONEBOCK, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. August E. Stonebock.

Q. What is your official position in Peoria County?

A. Sheriff of Peoria County.

Q. How long have you been sheriff of Peoria County?

A. Three years and one month.

Q. I will ask you if, prior to January 1, 1942, and after December 28, 1941, you received any request from George P. McNear, Jr., the president of the T. P. & W. Railroad,—

A. I did.

Q. —with reference to protecting the railroad and its property in this strike?

A. I did.

Q. What did you tell Mr. McNear?

A. I told him that I would do all I could for him, but that I was limited so far as my personnel was concerned, and I would do as much as I could for him.

Q. What did you say with reference to your protecting the road?

A. I have a patrol car, and that we would patrol the roads in Peoria County and the vicinity where the pickets and men were stationed.

Q. Were you able to protect the railroad and cope with the situation?

A. As far as I could. I had a few men to do the 547 job with, and I did as best as I could.

Q. You told him you couldn't protect the railroad and its property in this strike because you had an inadequate force?

A. That's right.

Q. How many deputies do you have, Gus?

A. Six uniformed men.

Q. That is your total force, is it?

A. Yes.

Q. To take care of a county the size of Peoria?

A. That's right.

Q. Is Hollis and the Toledo, Peoria & Western Railroad in Peoria County from Peoria, the City of Peoria, west through Glasford?

A. That's right.

Q. Is Glasford in Peoria County?

A. That's right.

Q. Is Wheeler crossing in Peoria? That is the school-house crossing just west of Hollis.

A. Yes, that's right.

Q. And the Pekin road crossing from Orchard Mines to Pekin, is that right?

A. Yes, sir.

Q. And the Allied Mills?

A. Yes, sir.

Q. And Persimmon Street?

A. That's right.

Q. And Hiram Walker crossing?

A. Yes, sir.

Q. All those crossing and places are in Peoria County?

A. Yes.

548 Q. And that is your jurisdiction?

A. That's right.

Mr. Heyl: That's all.

*Cross-Examination by Mr. Knoblock.*

Q. Sheriff, how many times have you talked to Mr. McNear about this?

A. The one time that he called me on the phone.

Q. What day was that?

A. Well, I don't know exactly. I think along about the 28th, along in there.

Q. 1941, in December?

A. That's right.

Q. Outside of that telephone conversation, did you ever get any other request from McNear?

A. No, sir.

Q. Did you ever get a telegram from him?



A. Yes, sir.

Q. What day did you get the telegram?

A. Before the first of the year. I don't know exactly what day it was.

Q. On the situation at Hollis did Mr. McNear ever call you, and ask you to send any men to Hollis?

A. On Friday, I think it was, the two men in the office got a call that there was a possibility of some trouble, violence, in the vicinity of Hollis, and that it would be a good idea to send some men down, which I did.

Q. And the only time you were ever called upon by the T. P. & W. Railroad to make any arrests were on 549 the occasion of Frank Lucas and Leo Totten?

Mr. Heyl: I object, just assuming that fact.

The sheriff hasn't said he made any arrests.

The Court: I don't understand he made any arrest.

Q. Did you take any men into custody?

A. I did not.

Q. You did have Frank Lucas and Leo Totten in your county jail?

Mr. Heyl: I object, because he had nothing to do with it.

The Court: Is that outside the railroad company?

Mr. Knoblock: No, it is definitely not outside.

The Court: Who issued the warrant?

Mr. Heyl: Our own special agent took him to the City Hall.

Mr. Knoblock: You will find out that isn't true.

Mr. Heyl: Go ahead!

Mr. Knoblock: Read your own affidavits.

The Court: Is there an allegation in the complaint with regard to these two men?

Mr. Knoblock: Yes, sir, and it is not what Mr. Heyl says it is, either.

The Court: We will find out. Read the question.

(Question read by reporter.)

The Court: The objection will be sustained to that.

Q. Every time that you have been called upon by Mr. McNear to send men to any particular point, you have done so, haven't you?

Mr. Heyl: I object to that as assuming.

The Court: He may answer.

Mr. Heyl: Find out what was done. That is too 550 general.

The Court: He may answer.

A. Do you have reference to the arrests now?

Q. On any occasion your office has been called upon by Mr. McNear to perform some service in protecting his road, you have done so?

A. That's right.

Q. You have never failed or refused to respond to any call from him?

Mr. Heyl: I object; too general; asking for a conclusion.

Q. With reference to any disturbances concerning this strike?

The Court: He may answer.

A. I have, yes, sir.

Q. And your force, with reference to any disturbance concerning this strike, has never proved to be inadequate, has it?

Mr. Heyl: I object as a conclusion. The facts show that.

Mr. Knoblock: We object to that statement.

The Court: That statement may be stricken, but the objection will be sustained.

Q. You have had men available and have sent them to preserve peace and order every time that you received a request from the T. P. & W. to do so during the period of this strike?

Mr. Heyl: I object to that as too indefinite, and asking for a conclusion.

The Court: He may answer.

A. I had a call at one time, and we responded.

Q. And there has never been an occasion since this strike started that you have ever received a request from Mr. McNear or his company which you have been unable to respond to?

Mr. Heyl: I object as asking for a conclusion, and too indefinite.

The Court: I think he answered that; objection sustained.

Mr. Knoblock: Excuse me a moment, Your Honor. I would like to find that allegation.

Q. You have never at any time, have you, Sheriff,—

Mr. Heyl: I would like to have you point out to the court the statement that the affidavit contains that statement.

Mr. Knoblock: Contains what statement?

Mr. Heyl: That we made the statement the sheriff made this arrest.

Mr. Knoblock: You made the statement that I said the affidavit disproved. That is what I had reference to.  
(Question read by reporter.)

Q. —received a complaint from Mr. McNear that you were not cooperating with him, and that you were not responding to his calls—

Mr. Heyl: I object.

Q. —during this strike?

The Court: Objection sustained. This witness testified he was called on once, and answered the call. What is the use of going into this? Is that correct, Mr. Sheriff?

A. That is correct.

The Court: Objection sustained.

552 Q. Did you ever receive a call from Mr. McNear or the T. P. & W. to proceed to the Wheeler crossing because of trouble?

Mr. Heyl: I object to that.

The Court: I think he may answer.

A. We patrolled the entire road. That took in Wheeler crossing.

Q. Did you ever get a complaint from Mr. McNear of the T. P. & W. that there was trouble at the Cedar Street viaduct or Cedar Street crossing at Peoria?

A. He told us to patrol all along the road. It was my understanding we had started, and we have started in at Cedar and took in the whole territory.

Q. That took in the territory of the Allied Mills, too, didn't it?

A. That's right.

Mr. Knoblock: That's all.

*Redirect Examination by Mr. Heyl.*

Q. You had a call that morning of January 2 from Mr. Best of the T. P. & W. Railroad?

A. That's right.

Q. And he told you there was going to be trouble on the west end, meaning from Peoria toward Canton?

A. That's right.

Q. And you sent two men, didn't you?

A. That's right.

Q. They didn't get there until it was all over, did they?

A. They got a call on the radio that there had been a shooting below the Allied Mills, and they went on down.

In the meantime, I think it was Mr. Kipling had gotten these two men in Peoria. They called the city police.

The city police were called to assist, and they made the arrest.

Q. Your men were not present at any place along this T. P. & W. Railroad parallel to this road at any time that morning, were they, when the train was there and the strikers were there?

A. Hadn't gotten there.

Q. They hadn't gotten there?

A. No.

Q. They did nothing along the road with reference to the strikers this morning?

Mr. Knoblock: I object to the form.

The Court: I think he answered. He said they weren't there.

Q. That is the only time they patrolled the road, isn't it, Gus, that morning?

A. We patrol the roads all the time.

Q. You mean in Peoria County?

A. Yes.

Q. You have six men to do the patrolling?

A. Two men on every eight hours. We have six men.

Q. When you say "patrolling," you mean, don't you, patrolling all the roads in Peoria County?

A. Yes, sir, that's right.

Q. How many miles of road are there in Peoria County?

A. I can't answer that exactly.

Q. Several hundred miles?

A. That's right.

Mr. Heyl: That's all.

Q. Your office never received a call from Mr. Best until after the shooting had occurred, is that right?

Mr. Heyl: I object as assuming.

The Court: If he knows.

Do you know when this shooting occurred? Maybe we can get at it this way: What time in the morning did

you receive notice there was likely to be trouble on this particular road?

A. Between 9 and 9:30.

The Court: And you don't know when the shooting occurred?

A. Not exactly, no.

The Court: Go ahead!

Q. As soon as you had received that call from Mr. Best, you promptly sent your men out there?

A. That's right.

Q. The two men that you say Kipling apprehended: here in Peoria, they were not the men charged with the shooting?

A. That I do not know.

Q. You don't know?

A. No.

Mr. Knoblock: That's all.

The Court: I think we will take a recess for a few moments.

(Recess.)

555 GEORGE HANLEY, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Elliott.*

Q. You may state your name.

A. George Hanley.

Q. Where do you live, Mr. Hanley?

A. I am living at the T. P. & W. at the present time.

Q. What is your business?

A. Rear end brakeman.

Q. Were you rear brakeman on extra 40 west, which departed at about 8 A. M. from Effner on January 1?

A. Yes, sir.

Q. Where did you ride?

A. I was riding on the rear end, in the caboose.

Q. And when you got to Fairbury, was there any switching done?

A. Yes, sir.

Q. Tell us what was done.

A. When we got to Fairbury, I was on the rear end, brakeman. There happened to be two brakemen on the front end at that time, Mr. Armstrong, who was conductor at that time, and Bob McKinney. I was on the rear end, taking care of the rear end of the train, and I knew nothing about what happened. All I knew was they did some switching out there. And when the train started up after we connected up the train, the conductor came back and told me someone had thrown a derail.

Mr. Knoblock: I object.

The Court: Yes, that may be stricken.

556 A. What were you doing with reference to this derail?

A. I was on the rear end, and knew nothing about the derail.

Q. How far east of where the derail was?

A. Where I was?

Q. Yes.

A. I was east of the derail about two thousand feet.

Q. Were you anywhere near the derail?

A. No, sir.

Q. And you know nothing with reference to that?

A. No, sir.

Q. You had nothing whatever to do with the throwing of the derail one way or the other?

A. No, sir.

Q. After you left Fairbury, you proceeded on west toward Peoria, did you?

A. That's right.

Q. What, if anything, occurred when you got to Cruger?

A. Yes, sir.

Q. Tell us.

A. I didn't stop at Cruger, went right on through Cruger. I was in the left bay window of the caboose, and just as we went by the station at Cruger I turned my head to the left and saw four men west of the depot. Just as I turned my head, they raised their arms, and all four of them threw stones.

Q. What did you do?

A. I ducked. I fell to the floor and turned my head to see where the conductor was, and he was still writing away.

Q. What effect did it have upon the bay window?

A. It didn't have any effect on the bay window.



557 I had opened the inside window (and it broke the outside window) to keep it from being broken just before we got to Cruger, and I saved that window by opening it, and when a stone came in through the left window I jumped on the floor face first and looked to see where Jake Armstrong was, and he was working at the table making out his reports. Just as I turned my head to look where he was, one came through the right window.

Q. Was his table over on the right hand side?

A. No, sir, he was sitting right behind me at his table, behind my seat.

Q. What effect did this stone that came through the right window have?

A. It broke both of them on that side.

Q. Those cabooses have double windows?

A. Yes, sir, on the floor, on the windshield.

Q. When you proceeded on from Cruger, you came to Washington next?

A. Yes, sir.

Q. What, if anything, occurred there?

A. We had a special agent on the rear of the train at that time. We had a special agent on the rear of the train at that time, and just before we got to Washington he made the whole rear end crew get up in the front of the caboose by the front door, so Jake Armstrong and myself, we got up on the front end. It was getting tiresome, and we sat on the floor. When we went through Washington, someone threw some stones, but it had no effect except to hit the caboose.

Q. You recognized none of these men?

A. No, sir.

Q. When you proceeded west, you reached Farmdale?

558° A. Yes, sir.

Q. What occurred at Farmdale?

A. One stone hit the caboose at Farmdale.

Q. Then what did you do?

A. Proceeded on to Peoria.

Q. How long have you worked for the T. P. & W.?

A. Since December 31.

Q. What was your business prior to that time?

A. I was a rodeo rider.

Mr. Elliott: That's all. Cross-examine!

*Cross-Examination by Mr. Knoblock.*

Q. You say you are living now at the T. P. & W. yards in East Peoria?

A. That's right.

Q. How long have you lived there?

A. Since the first day of employment.

Q. That was on December 30, 1941?

A. No, sir, it was the second day. I started staying there the 31st.

Q. And when did—How long have you lived in Peoria or East Peoria?

A. This is my home town.

Q. When you were a rodeo rider, did you make Peoria your home town?

A. No, sir, I was all over the United States.

Q. How long were you engaged in that occupation?

A. About twelve years. Of course, I was a truck driver for quite a while during the winter time.

Q. Are you one of the men that has been offered \$59 a bonus of \$10.00 a day over and above your regular day rate?

A. No one offered it to me, but I heard it was going to be paid. I have asked no question about the—it whatsoever.

Q. On December 31 you went east on extra-40, is that right?

A. December 31.

Q. December 31 you were on extra 40, is that right?

A. Extra 40 east.

Q. Extra 40 east?

A. Yes, sir.

Q. And you were in the position of a brakeman on that day?

A. That's right.

Q. Were you a full-fledged brakeman or apprentice brakeman?

A. Well, I have had about three months previous is all.

Q. Where is that?

A. Southern Pacific, Tucson, Arizona.

Q. What year?

A. That has been 1936.

Q. What rate of pay were you paid? What is your

regular rate of pay you have been offered, not including your bonus?

A. Now?

Q. Yes.

A. \$7.00 a day, I believe it is; \$7.00 and some odd cents, I believe it is.

Q. Who else was on this train as you left Peoria here on December 31?

A. Mr. Compton was our engineer. There was a new man firing; I didn't know his name. Jake Armstrong was the conductor. Lindel Douglas was rear end brakeman. I can't say that he was rear end brakeman, but he was a brakeman, and Bob McKinney was braking, and myself. We had two clerks from the office on the train.

Q. You have mentioned a special agent. Did you observe him carrying a gun?

A. Yes, sir, I saw a pistol.

Q. Do you know what calibre it was?

A. Yes, sir, it was a 38.

Q. Who was that man? His name?

A. Blanchard, L. Blanchard.

Q. L. Blanchard?

A. Yes, sir.

Q. Where is he from?

A. Well, sir, I think he's from Chicago.

Q. Do you know who employed him?

A. No, sir.

Q. Do you know whether or not he had ever worked for the T. P. & W. prior to the strike?

A. No, sir, I don't.

Q. Nothing happened as you went east on this extra 40, is that right?

A. Nothing at all. Nothing happened going east or all the way back until we got to Cruger that I know of.

Q. Was there a man on this extra 40 east by the name of Ernie Funk?

A. I couldn't swear to that. I don't know. I believe we had two engineers at that time, but I couldn't say who they were, outside of Mr. Compton.

Q. Do you recall a Mr. Walker on this train?

A. Mr. Walker?

Q. Yes.

561 A. There are two Walkers.

Q. Were there two Walkers on this particular train?

A. I can't recall that.

Q. You can't recall there was anybody by the name of Walker?

A. I can't recall whether there was or not. That was my first trip at that time, and I knew no one except the brakeman and the conductor and one engineer.

Q. What time did you leave Elfiner, Indiana, on extra 40 west?

A. On extra 40 west we left at 8 o'clock January 1, New Year's morning.

Q. And where were you located on that train at that time?

A. I was rear end brakeman.

Q. Did you remain in the rear end all the way to Peoria?

A. No, I came forward two or three times to help with the switching.

Q. Did you ever ride in the front end at any time while you were going through the country?

A. No, sir, I didn't.

Q. Isn't it a fact that at one time you and Lindel Douglas changed positions?

A. I believe we did once or twice. I don't quite remember whether we did, but I think we did at one time. That would have put me on the engine at one time. I was rear end brakeman and, if I was up there, it wasn't for very far.

Q. When you got to Fairbury, what time of the day was that?

A. That's something I can't recall.

Q. What is your best judgment?

A. I would say somewhere—

Q. What?

562 A. I would say somewhere around 1 or 2 o'clock, maybe noon.

Q. How long did you stay there at Fairbury?

A. We weren't in Fairbury over three-quarters of an hour at the most.

Q. And how far is it from Fairbury to Peoria?

A. Fairbury to Peoria is—I don't know what that is. It's about fifty-eight or sixty miles.

Q. What time did you arrive in Peoria that day?

A. We arrived in Peoria at 5:40.

Q. 5:40 in the evening?

A. That's right.

Q. When you came through Farmdale, it was dark at that time, was it not?

A. Yes, sir.

Q. You say one stone was thrown?

A. We felt something hit the side of the caboose.

Q. Once?

A. That's right; once.

Q. You have no idea who threw that?

A. No, sir.

Q. And you did not see it thrown?

A. No, sir.

Q. At Washington there was just one stone thrown also; or one object that hit the caboose, is that right?

A. Yes, sir, that's right.

Q. And you don't know who threw that?

A. No.

Q. Now, at Fairbury you know nothing concerning the derail whatsoever?

563 A. No, sir. I was on the rear end of the train at that time.

Q. You don't even know whether the derail was thrown back on, other than what you have been told, is that right?

A. Yes, sir.

Q. Were you in the caboose all the time at Fairbury?

A. No, sir, I was behind the caboose on the track.

Mr. Knoblock: That's all.

*Redirect Examination by Mr. Elliott.*

Q. Did some of the other members of the crew stay back at the rear end of the train with you while the other members of the crew were doing the switching up in front?

A. None of the crew; just the special agent.

Q. Just the special agent?

A. Yes.

Mr. Elliott: That's all.

*Recross Examination by Mr. Knoblock.*

Q. Do you know which member of the crew handled the derail at Fairbury?

A. No, sir, I couldn't tell you.

Mr. Knoblock: That's all.

The Court: Call the next witness.

Mr. Heyl: I would like to call Frank W. Lucas. The plaintiff is calling this witness as an adverse witness, and one of the defendants, for the purpose of cross examination as provided by the rules.

564 The Court: You may interrogate.

FRANK W. LUCAS, called as an adverse witness by the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Cross-Examination by Mr. Heyl.*

Q. What is your name?

A. Frank W. Lucas.

Q. And where do you live?

A. 1233 Main Street, Peoria.

Q. What is your business or occupation?

A. Brakeman.

Q. And formerly employed by the Toledo, Peoria & Western Railroad?

A. Yes, sir.

Q. And are you one of the defendants in this case?

A. Yes.

Q. And you are one of the defendants out on strike?

A. That's right.

Q. And do you belong to one of the Brotherhoods?

A. B. of R. T., yes, sir.

Q. On January 2, 1942, I will ask you whose automobile you were riding in when you were on the road paralleling the T. P. & W.'s right-of-way west of Peoria.

A. Jack Totten.

Q. Who was that?

A. Jack, or Leo, Totten.

Q. When did you get into his automobile?

565 A. Union Station.

Q. Who else was in his automobile?

A. Nobody.

Q. Where did you go from the Union Station?

A. We went to Hollis.

Q. Did you stop at Hollis?

A. No, we turned around there is all.

Q. And turned around and met the train near the Allied Mills crossing, didn't you?

A. No, we never met it at Allied Mills.



Q. Below the Allied Mills? About two thousand feet west?

A. No, farther than that; about three-quarters of a mile south.

Q. And you and Mr. Totten stopped there?

A. That's right.

Q. And you got out of the car?

A. That's right.

Q. And he remained in the car, and had the car remain running?

A. Yes, sir.

Q. Were there any other people there at that time?

A. I saw cars in both directions, but I don't know who they were.

Q. Did they stop there?

A. They were behind us. They slowed down.

Q. Do you know who they were?

A. No.

Q. Did you recognize any person along the railroad?

A. I recognized Kipling meeting us.

Q. Did you recognize anybody else?

A. No, I didn't.

Q. Any former employees of the railroad that you recognized?

566 A. No, sir.

Q. Why did you stop on the road at that place?

A. To see who was running that engine.

Q. Were there any other persons around there?

A. I never saw anybody on the ground. There were some cars. I couldn't tell you who they were.

Q. Cars back of you?

A. That's right.

Q. Did they go down to Hollis and turn around?

A. I couldn't tell you that.

Q. Did they stop back of you?

A. I couldn't tell you that, even.

Q. Where did you stop this car?

A. Right on the shoulder.

Q. On the shoulder?

A. Yes.

Q. Did you get out of the car?

A. I did.

Q. Where did you stop?

A. At the door of the car.

Q. Where did you get the bottle you used to throw benzine in this engine?

A. I never had any bottle.

Q. Isn't it a fact you are the man who threw the bottle of benzine in the engine?

A. I am the man that's accused.

Q. Are you the man that did it?

A. I did not.

Q. And you immediately jumped in the car?

567 A. I jumped in the car when I saw Kipling getting his sawed-off shotgun out.

Q. And you came back to Peoria?

A. Yes.

Q. And you were arrested where? At the corner of Adams and Western?

A. No, sir, we were stopped there.

Q. "We were stopped there"?

A. We stopped in the traffic, and Kipling drove alongside of us.

Q. And he stopped you?

A. Yes.

Q. And you remained there until he secured the services of the Peoria police to take you to the City Hall, is that right?

A. That's right.

Q. Where were you the day before?

A. The day before I was on picket duty some place.

Q. Were you with Totten?

A. I can't recall that I was, no.

Q. Who were you with?

A. I don't exactly know now who I was with.

Q. You knew all the men on the picket line, didn't you?

A. That's right.

Q. Will you name the men whom you saw on the picket line?

A. On what day?

Q. The day before this occurred; on January 1.

A. I couldn't name any of them. I don't even know where I was at.

Q. Were you on the picket line?

A. I was either at the viaduct or the lane, one.

Q. The viaduct in East Peoria?

A. That's right.

568 Q. How long were you on the picket line that day?

A. Whatever the shift called for. We had two hour shifts, four hour shifts, some six hour shifts.

Q. You were there part of that day?

A. That's right.

Q. Where were you on the picket line on December 31, Wednesday?

A. I don't know. We have a record of that, but I don't have it.

Q. Who has the record?

A. Chairman.

Q. Who is the chairman?

A. Joe Burkhalter.

Q. Is he in court?

A. No, he isn't.

Q. Where is he?

A. At the Jefferson Hotel.

Q. Is he one of the former employees of this railroad?

A. Yes, sir.

Q. Does he live at the Jefferson Hotel?

A. No, he doesn't.

Q. You have seen the record in his possession?

A. Yes.

Q. What is his full name?

A. J. W. Burkhalter.

Q. What is it?

A. Joseph W. Burkhalter.

Q. He is the chairman of your Brotherhood?

A. That's right.

Q. Does that record show where every man was on picket duty?

A. Yes, we have several records there that show where we were at.

569 Q. Is that the headquarters of the Brotherhood?

A. That is our meeting place.

Q. What place in the Jefferson Hotel?

A. Room 238.

Q. Whose room is that?

A. I couldn't say.

Q. Is that F. W. Coyle's room?

A. No.

Q. Keiser's room?

A. No.

Q. Who has charge of that room?

A. The B. of R. T.

Q. Is that the room where directions were given relating to this strike?

A. No, it wasn't.

Q. Where were they given?

A. I don't know.

Q. Who gave you instructions with reference to what you were to do in this strike?

A. Our chairman.

Q. Who is that?

A. Newdigate D. G. Newdigate, and C. S. Gabbert.

Q. C. S. Gabbert is one of the officials of the Brotherhood?

A. Vice-chairman.

Q. Vice-chairman?

A. That's right.

Q. And Delmar Newdigate—is that his name?

A. Yes, he is chairman.

Q. Chairman of your Brotherhood?

570 A. That's right.

Q. And these men gave instructions to you and the other men as to what should be done?

A. We were told there was a strike called at 6 P. M. on the 28th and we were assigned pickets. That is all the instructions I had.

Q. Did they tell you to assign pickets?

A. No.

Q. Who assigned the pickets?

A. The chairman of the meeting, whoever it was at that time.

Q. You followed the instructions of one of these officers, did you,—

A. That's right.

Q. —in whatever was done?

A. That's right.

Q. Who sent you to Hollis on January 2?

A. Nobody.

Q. How did you happen to go down there?

A. To see who was on this engine.

Q. On what engine?

A. On this particular engine going out that way.

Q. And you left the Union Station?

A. That's right.

Q. Did you see the train at the Union Station?

A. We couldn't get a chance to look at it there, no.

Q. You saw it at the Hiram Walker crossing, didn't you?

A. No, we wasn't in there.

Q. And you saw it down at the Iowa Junction crossing?

A. No, we wasn't in there.

571 Q. Did you stop any place along the road after you left the Union Station until you got to Hollis?

A. No.

Q. Were there any other cars along there?

A. We met several cars, but I don't know who they were.

Q. I am talking about cars that traveled along the road.

A. What do you mean, "traveled"?

Q. From the Union Station on west.

A. I said we met cars, but I don't know who they were.

Q. I am asking about cars following you, or immediately ahead of you.

A. There were no cars with us.

Q. Do you know Arthur Brewster?

A. I do.

Q. Did you see him that day?

A. I never saw him down there.

Q. Where did you see him?

A. I can't recall seeing him.

Q. Did you see Walter McMullen?

A. No.

Q. Did you see H. J. Dilley?

A. No.

Q. Did you see George Kneisley?

A. I saw him at a meeting later on, when we had the meeting in the afternoon.

Q. Did you see him at any time between the Union Station and Hollis?

A. No.

Q. Did you see W. A. Evans?

A. No.

572 Q. Did you see Walter Kohtz?

A. No.

Q. Did you see any of these men whose names I have asked you present there when this bottle was thrown?

A. No, I didn't see any of them to recognize them.

Q. Were there any of these men I have asked you about at the place where you and Totten stopped to see who was on this engine?

A. I couldn't recognize them. There was three or four cars.

Q. Did you see any of them?

A. I didn't see them to recognize them.

Q. Were there any of these men I have mentioned there near where you and Totten stopped to see who was on the engine?

A. No.

Q. They weren't around?

A. I don't know whether they were or not. There were some cars behind us.

Q. Did you recognize any of the cars?

A. No.

Q. Who was the first car?

A. The first car was Kipling. He was probably one car length in front of us.

Q. He wasn't west? He was east?

A. He was coming south, meeting us. We were going north.

Q. You were going toward Peoria?

A. That's right.

Q. And he was coming from Peoria?

A. That's right.

Q. And he turned around before he reached your car, didn't he?

A. No.

573 Q. Where did he turn around?

A. I don't know.

Q. He was right back of you?

A. I don't know that, even.

Q. How fast did you drive from that point to Peoria?

A. Oh, I don't know; possibly thirty-five or forty.

Q. You did not go beyond that speed any place?

A. No.

Q. Outside of Mr. Kipling's car, whose car was near to your car when you and Totten stopped?

A. I didn't recognize any of the cars.

Q. Were the other cars— How close were they to you?

A. Oh, I don't know just how close they were.

Q. Two or three blocks?

A. Two or three cars right behind us.

Q. What's that?

A. There was two or three cars right behind us.

Q. How close was the first car to you?

A. Oh, possibly a car length.



Q. Were they on the shoulder, too?

A. They were on the pavement.

Q. They were traveling?

A. That's right.

Q. And none of these cars stopped,—

A. No.

Q. —is that right?

A. I didn't see them stop, no.

Q. Did they stop?

A. I couldn't say to that.

574 Q. Were any of the men from these cars out on the ground or pavement or right-of-way of this railroad while you were standing there?

A. No.

Q. All the cars you saw moved on the pavement on up toward Peoria?

A. They were behind us. I don't know where they went.

Q. You were stopped?

A. Just about stopped is all.

Q. You got out on the shoulder?

A. That's right.

Q. And you got out of the car, and Totten remained at the wheel?

A. That's right.

Q. Where did you go?

A. Stood right at the door, one hand on the door.

Q. One hand on the door?

A. Yes.

Q. And one foot on the footboard?

A. No, I had both feet on the ground.

Q. Where was the engine with reference to you at that time?

A. Right straight—just right straight across from us.

Q. Right across, and about twenty feet from you?

A. I don't know how far it was.

Q. What is your best judgment?

A. Oh, I would say probably thirty or forty feet, something like that.

Q. And the engine is lower than the road at that point, isn't it?

A. Yes, you can look right down in the cab.

Q. You can look right down in the cab, can't you?

A. That's right.

575 Q. Were there any cars to your—to the north of you? I mean across the road. Assuming that road runs east and west, were there any cars on the other side of the road going south?

A. You mean meeting us?

Q. Yes.

A. Yes, there were two or three behind Kipling, but I couldn't tell who they were.

Q. They went on?

A. I guess they did after he got out of the way.

Q. You didn't see any men standing around there, did you?

A. No.

Q. Now, how soon after the engine reached you and was straight across from you did you get back into the car?

A. Oh, as soon as I could look at the engineer.

Q. Did you recognize the engineer?

A. I never saw him before, no. I didn't know who he was.

Q. Did you recognize anybody on the engine?

A. No.

Q. Didn't recognize anyone running the engine?

A. That's right.

Q. How fast was the engine traveling?

A. Oh, he was going possibly twenty-five miles an hour.

Q. Did he stop?

A. I don't know whether he stopped or not.

Q. You didn't wait to see?

A. He hadn't stopped when I was there.

Q. Did you wait to see?

A. No.

Q. You got out immediately?

576 A. As soon as I saw Kipling drive up, we got in the car and left.

Q. Had you any difficulty with Kipling before that?

A. I did.

Q. What trouble did you have?

A. He got sore because I joined the B. of R. T., for one thing.

Q. In connection with this strike?

A. No.

Q. You didn't have any trouble?

A. No. There was a grudge. He had forbidden me to speak to him, said, "Don't get around me."

Q. You saw him come down there and, because you saw him, you turned away?

A. No, he was getting his sawed-off shot gun. He was practically stopped, and brought the gun to the window.

Q. Did you see the gun?

A. Yes.

Q. And he was stopped?

A. Right directly in front of us.

Q. He turned around behind you, didn't he?

A. I don't know where he turned around.

Q. As far as you know, did he turn?

A. Yes, he come up to us in Peoria.

Q. Was his car in front of you?

A. No.

Q. Where was it?

A. It was sitting at an angle to us.

Q. Right in front of you?

A. No, on his side of the pavement.

Q. You were on the river side of the pavement, weren't you?

577 A. We were on the right side.

Q. Going north?

A. That's right.

Q. And he was on the other side going south?

A. That's right.

Q. Did he stop his car?

A. As far as I could tell, he stopped.

Q. How long did he stop?

A. I don't know.

Q. He stopped long enough to see you throw that bottle?

A. I don't know when he stopped.

Q. Did you see anybody else throw a bottle at the train?

A. I never saw any bottle thrown.

Q. Did you see any bricks thrown?

A. I didn't see anybody.

Q. There wasn't anybody to throw them?

A. I saw cars.

Q. There was no one standing there?

A. No.

Q. No one gathered there?

A. That's right.

Q. And none of your men up and down the road either direction?

A. Not that I could recognize.

Q. Did you see anybody on the road walking?

A. Nobody walking.

Q. Nobody walking in either direction from where you were, is that right?

A. That's right.

Q. Where did you and Totten go after you gave bond at the City Hall?

578 A. Where did we go? I went to the Oriental and ate dinner.

Q. Did you stop any place before you got to the Oriental?

A. No.

Q. Did Totten go with you?

A. Totten went to the Oriental, called his wife up, and went from there directly home.

Q. Was there anybody with you when you went to the Oriental?

A. John W. Totten, Jack's brother.

Q. Was he with you in the car that morning?

A. No.

Q. Were there any passengers in that car except you and Totten?

A. No.

Q. None of the men that were in the cars back of you were on the running board or standing beside the cars, were they?

A. No.

Q. If there were men in the cars, you couldn't see them, is that right?

A. That's right.

Q. How many cars, now, in the line back of you?

A. I couldn't say exactly. There was three or four.

Q. Three or four?

A. As far as I could see.

Q. And the first one was how close to you?

A. Possibly a car length behind us.

Q. And the last one?

A. Back of him.

Q. How far?

A. Just right up behind him.

Q. There was these cars in a line, and no one outside of the cars?

579 A. That's right.

Q. Were there any cars toward Peoria on either side of the road from you?

A. Yes, on the right side of the pavement.

Q. Whose car was that?

A. I couldn't tell you who it was.

Q. Was it moving?

A. Right behind Kipling.

Q. They were moving on?

A. When Kipling stopped, they stopped behind him.

Q. Did they go around Kipling?

A. Not while I was there.

Q. Was Kipling still stopped when you started your car?

A. He was stopped when we got in the car and left, yes.

Q. Were the motors running in the other cars back of you?

A. I couldn't say to that.

Q. You couldn't even hear that?

A. No.

Q. It was a cold day that day, wasn't it?

A. It was.

Q. How cold was it?

A. I couldn't say just how cold it was.

Q. So the only man that you recognized any place around that vicinity was Kipling?

A. That's right.

Q. I want to ask you once more: Did you recognize anyone that was in that engine?

A. No.

Q. Do you know Funk?

580 A. I know Funk, but he wasn't sitting in the engine at that time.

Q. Do you know whether he was in the engine?

A. I couldn't say.

Q. How many men did you see?

A. I only saw one.

Q. Where was he?

A. In the engineer's seat.

Q. Was the window up or down?

A. The window was open.

Q. Are you sure of that?

A. Yes.

Q. It was knocked out up the road?

A. I can't say.

Q. Were you there when it was knocked out?

Mr. Knoblock: I object.

The Court: Yes, objection sustained.

Mr. Heyl: I think that's all.

*Redirect Examination by Mr. Knoblock.*

Q. What is your age, Frank?

A. Thirty-five.

Q. You say you live here at 1233 Main Street, Peoria?

A. That's right.

Q. How long have you lived in Peoria?

Mr. Heyl: I want to object as not proper. This witness cannot be cross examined by his counsel.

Mr. Knoblock: I am not cross examining.

531 Mr. Heyl: He can only ask questions provided by the rule.

The Court: That is right.

I think he may answer how long he has lived here.

A. I have lived in Peoria and East Peoria five years.

Q. How long have you been employed by the T. P. & W.?

A. Five years.

Q. When did you become a member of the B. of R. T.?

A. Oh, last April, I believe.

Q. They interrogated you or questioned you about January 2, 1942, at a time when you were riding with Jack Totten.

A. Yes.

Q. Is that the same man as John Totten?

A. No.

Q. Are they any relation?

A. Brothers.

Q. Now, Jack Totten, is that the same man as Leo Totten who is one of the defendants in this case?

A. Yes.

Q. Where did you meet Jack Totten that day?

A. Jack Totten at the Union Station.

Q. And whose automobile did you go in?

A. Leaving the Union Station?

Q. Yes.

A. Jack's.

Q. What direction did you travel?

A. We traveled down Washington Street south.

Q. Go ahead and tell us whatever road you took to get out to Hollis, or wherever you turned around.



582 A. We traveled Washington to Adams, Adams down to Route 24 through Bartonville to Hollis.

Q. With reference to the place where Totten and you stopped your car and Kipling stopped you, where was that?

A. That was just a little south of the Elm Grove Tavern.

Q. When you got back to Peoria?

A. That was in Peoria on Adams Street just below Western.

Q. What caused the stopping of your car?

A. Well, we heard a car honking insistently, and we got up in the traffic, and this car drove alongside of us and kept honking, and we stopped and here came Kipling with his sawed-off shotgun.

Q. What was the condition of the windows in the automobile that day?

A. We were frosted.

Q. Were they frosted to such an extent that your vision was blocked to the side or rear?

A. Out to the side and rear, yes.

Q. When Kipling stopped his car, tell what happened.

A. When Kipling stopped his car, he came running around like a mad man.

Q. What did he do?

A. He pulled a sawed-off shotgun and said, "Say your prayers. I want to kill you right here."

Q. What was he doing with the sawed-off shotgun at that time?

A. He had his finger on the trigger and his thumb at the safety catch, pointing right at me, right in my face.

Q. You say he had one finger on the safety catch. What was he doing there?

A. Working it back and forth.

Q. How many times did he tell you he was going to kill you that day?

583 A. About twenty-five or thirty times.

Q. Did he do anything with reference to Jack Totten?

A. He said, "You did that, Jack, yourself." He said, "You got in the mess yourself. I will just kill you both right here."

Q. What was he doing during this twenty-five or thirty times he was telling you he was going to kill you?

A. He was calling us all the vile names he could think of.

Mr. Heyl: I move that be stricken as a conclusion.

Mr. Knoblock: Do you want the names?

The Court: Let's move along. If you are going to use this in defense, I am going to confine you to what you have used today. I am not asking you to tell this story twice.

Mr. Heyl: I want to object to this examination as not within the rule. All they can ask is his explanation of what was said.

The Court: I take it this is an attempt to do that. He is now stating what happened in the arrest, and I think he is not limited, that he may do that.

Mr. Knoblock: If I understand the court, that I will be limited to that theory, I don't think I want to go ahead at this time.

The Court: I don't want to hear this twice, but I will permit you to go ahead if you want to, but I don't want to sit here by the week and listen to this story over.

Mr. Knoblock: Rather than be limited later, I would prefer not to proceed.

The Court: I am not asking you to cross examine 584 him, but you can see where we get. Suppose they call every witness, and spend the rest of three or four weeks on that, and you have a right to recall those people, we never would get through with this case. I don't want to limit either one of you on a record you are entitled to, and I have tried to go along as carefully as I could so that either of you won't get your record in a shape where you say the trial judge prejudiced your rights, but I am not going to listen three or four times.

Mr. Knoblock: I am not complaining, and now that I understand your position I don't think I care to interrogate this witness further.

The Court: (To witness.) That is all. You may be excused.

(Discussion off the record.)

The Court: Examine; gentlemen!

585 HAROLD E. KIPLING, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to Direct Examination by Mr. Heyl:

Q. What is your name?

A. Harold E. Kipling.

Q. Where do you live?

A. East Peoria. Springfield Hill, East Peoria.

Q. How long have you lived in Tazewell County?

A. About three years.

Q. Where did you live before that?

A. I lived in Bushnell, Illinois.

Q. How long did you live in Bushnell?

A. About fourteen years.

Q. What is your business or occupation?

A. I am chief special agent at the Toledo, Peoria & Western Railroad.

Q. How long have you been chief special agent?

A. Two years.

Q. Prior to that, what was your business or occupation?

A. I was a special agent, employed in the yards of the Toledo, Peoria & Western Railroad.

Q. How long have you worked for the T. P. & W.?

A. Five years.

Q. Before that, what was your business?

A. I was an ice cream maker, commercial ice cream maker.

Q. At Bushnell?

A. Yes, sir.

586 Q. I will ask you to refer to January 2, 1942, and state when you first observed the train west on that day, on the T. P. & W.

A. Extra west started out of the yards about 7:30 that morning.

Q. Where were you when it was started?

A. I was in the yards.

Q. What did you do?

A. I came out of the yards and started west with it. I went to the viaduct on the east end of our yards in East Peoria to see if there was anyone there. There had been some rocks thrown off on the engine there at that point, but there wasn't anyone there that day.

Q. What did you find?

A. I followed the train on west. I came over the viaduct, didn't find anyone there, so I came on west, and the next stop I made along the train was what we call "Jap Davis crossing", which is Washington Street.

Q. East Washington?

A. East Washington, yes, sir.

Q. Did anything happen there?

A. I observed a little truck drive up just as the engine passed, and three men were in the truck. Two of them got out and cursed the engineer and made signs at him.

Q. Did you recognize the three men?

A. I recognized two of them.

Q. Who were they?

A. Walter and Delbert Kohtz.

Q. K-h-o-t-z?

A. K-o-h-t-z, I believe.

Q. Were they former employees of the railroad?

587 A. Yes.

Q. Do you know whose truck it was?

A. No, I don't.

Q. What did you do?

A. I went on west with the train down Route 150, I believe it is.

Q. Did you see the train at the station, Union Station?

A. I went on west. I didn't come back into the Union Station.

Q. Where did you see the train after it left the Union Station the first time or place you saw it?

A. At the first place was Edmund Street that goes into Hiram Walker's.

Q. Is that known as the "Hiram Walker crossing"?

A. Yes, sir.

Q. What did you see there?

A. Well, I was sitting and waiting there for the train to come by (it hadn't gotten there yet), and a car pulled in behind me that had two men in it.

Q. Who was it?

A. John Gimming and Arthur Brewster.

Q. Are those men in the court room?

A. I see Brewster.

Q. Is John J. Gimming in the court room?

Mr. Knoblock: Pick him out.

Mr. Gimming: Right here (rising).

Mr. Heyl: Stand up, will you, please? (Persons named rise.)

Q. Those are the two men, are they?

A. Yes.

The Court: Don't waste time, gentlemen. He knows 588 these fellows, he has been there a long time, and if he swears to it—

Q. Did you have any conversation with these two men?

A. Yes. Gimming drove up beside my car. I had my windows open. He had his windows open. He said, "You are not coming back off the west end. We are going to get you, and get all the rest of them, and we have the stuff to do it with."

Q. What did you say?

A. I didn't say anything. The train had pulled out, and I went on west with the train.

Q. Then what?

A. The next stop I made was at what we call "Iowa Junction". That is where we set out the M. & St. L. I pulled across the viaduct.

Q. What happened there?

A. This car pulled in behind me, and another one, too, pulled in toward the train.

Q. Was there anyone in the car behind you?

A. John Gimming and Arthur Brewster.

Q. Same two men?

A. Same two men.

Q. Who was in the other car, if you know?

A. I seen one man—or two men—that I knew: Delmar Newdigate and Walter McMullen.

Q. Are they defendants in this case?

A. Yes, sir.

Q. Did you see George Kneisley?

A. The first time I seen him was at Allied Mills.

Q. Was he with either of these two men?

A. He wasn't in the car. I couldn't see through the 589 car because the windows were frosted, and there were only two men I seen that got out.

Q. Were there other men in that car?

A. Yes, sir.

Q. You are unable to identify them?

A. I couldn't identify them because of the frosted windows.

Q. Did you go on, then, beyond Iowa Junction?

A. Yes, I pulled on down a little ways farther where the power company has a little plant there. I pulled across from that, and they were sitting at the M. & St. L., and I watched.

Q. This train?

A. Yes, the train.

Q. Did anything happen there?

A. Gimming and Brewster pulled in behind me, and there were two cars on down the road farther.

Q. Standing there?

A. Standing there talking. They had the doors open, and they were talking. I don't know who was there at that time, so Gimming and Brewster pulled away from me and went down and were conversing with those people. I don't know who was in the car at that time.

Q. Then where did you go?

A. Followed the train on down, started through Bartonville, and I seen the cars were beginning to collect, three at that time, so I decided to go back up to the police station and call someone, but the police was not there. The station was open, and I called our president, Mr. McNear, and said, "It looks like we are going to have some trouble. You had better get hold of some police, city police, county police, looks like it might be at Hollis."

590 Q. Did you try to find help at Bartonville?

A. I went up to the station for that purpose.

Q. There were no police there?

A. No, sir.

Q. Did you see any police or highway police on the road that day?

A. No, sir.

Q. At any time?

A. Not until I picked up two men, stopped two men.

Q. What time was it you put that call in to McNear?

A. Approximately pretty close to 8 o'clock.

Q. In the morning?

A. Yes; maybe a little after.

Q. Where was the train at that time?

A. They were going on west.

Q. When did you see the train after you left Bartonville?

A. Directly across from the Allied Mills there is a track we set out feed cars on, and that is what we call the



"61 track." I pulled opposite the Allied Mills, and sat there in my car.

Q. Did they set out any cars there?

A. Yes, I think they set out ten cars. They set out quite a few cars.

Q. Did anything happen there?

A. Yes, sir.

Q. What?

A. George Kneisley came running up the road with a club in his hand, waving it, and Brewster and Gimming pulled in behind me in the car, and Gimming went across the road toward the tracks. Newdigate pulled up in his car (he had a car load of men), and Gimming pointed to one of my men, a guard on the train, which was on the right-of-way—this man was on the right-of-way—and 591 he said to Brewster, who had his car open right behind me, "I said cover that man, he has a gun, cover him," and he went across the road, and they were trying to agitate, get these men—

Mr. Knoblock: I object.

Q. Tell what was done.

A. They went across the road and waved their clubs at these two men, the two trainmen, the conductor and the brakeman that were setting out the cars.

Q. Where were they with reference to the property? Whose property were they on? How far did they get?

A. They got on the shoulder of the hard road next to the right-of-way.

Q. They didn't go on the right-of-way?

A. No, sir.

Q. What happened after that?

A. There wasn't any violence of any kind there, just a lot of noise and waving of clubs.

Mr. Knoblock: I didn't get that.

Q. Waving of clubs?

A. Yes.

Q. Go ahead!

A. Then the engine got on the rest of the train, pumped up their air, and started to advance westward and, as we advanced, I was riding slowly along with the train and, as I got down about, oh, I should say a hundred and fifty to two hundred yards, I saw a big mob collected.

Mr. Knoblock: I object.

The Court: State what you saw.

A. I saw a big crowd of men.

592 Q. Of what?

A. Of men and cars.

Q. Where were they?

A. They were on the right hand side of the hard road going west.

Q. How far were they west of the Allied Mills plant?

A. I would say from three to five hundred yards.

Q. And how close were they to the railroad right-of-way?

A. They were standing right on the left hand shoulder of the road going west, which is right close to the right-of-way and the tracks, a little up over it.

Q. Did you recognize any of these men as you drove up?

A. Yes. I drove up within about thirty feet of the men, and I recognized a lot of men.

Q. Tell us who you recognized.

A. The first man I recognized was Frank Lucas. He had a bottle in his hand.

Q. What kind of a bottle was it?

A. Whiskey bottle.

Q. Was it empty, or appeared to have something in it?

A. It appeared to have something in it.

Q. What kind of substance?

Mr. Knoblock: I object.

The Court: Liquid?

A. It looked like liquid. He threw the bottle at the cab and it went inside, and, the minute it hit the engine, flames flew up and enveloped the engine.

Q. Where was Lucas when he threw this bottle?

A. Right on the shoulder of the hard road, next to the right-of-way and track going west.

593 Q. And where was the automobile that he afterwards rode in?

A. The automobile was headed back toward Peoria and a little to this side of Lucas, just a little bit this side of Lucas on the hard road, and running.

Q. Toward town?

A. Yes, sir.

Q. Was that the first car that you recognized?

A. Yes, sir.

Q. And the first man that you recognized?

A. Yes, sir.

Q. What did you do? Where were you when you saw him throw that bottle?

A. I was just getting out of my car, just stepping out of my car.

Q. Where was it?

A. On the right hand shoulder going west.

Q. How far from that car?

A. About twenty feet, I should say.

Q. Which way?

A. To the east?

Q. To the east?

A. Back toward town; back toward Peoria.

Q. Where was the locomotive at that time?

A. It was about forty feet ahead of me.

Q. Going which direction?

A. Going west.

Q. How fast was it moving?

A. Not very fast; very slow.

Q. What would you say in miles per hour?

A. I would say five miles per hour.

594 Q. Now, where was this mob or crowd of men? Mr. Knoblock: Wait a minute! I object.

A. This crowd were lined up all along the hard road. They was throwing rocks. I seen them throwing rocks.

Q. Where were they with reference to this car of Totten's?

A. Back.

Q. West?

A. Farther west, probably twenty or thirty feet. They were scattered out along behind him.

Q. How many men were there?

A. I would say thirty or forty.

Q. Did you recognize any of them?

A. Yes.

Q. Which ones did you recognize?

A. I recognized George Kneisley, Walter Kohtz, Walter McMullen, William Evans, Frank W. Lucas, Leo Totten. I recognized that many.

Q. Did you recognize the others as being former employees of the railroad?

A. Everybody I recognized was former employees of the Toledo, Peoria & Western Railroad.

Q. Did you notice any strangers among them?

A. No, I didn't. The only stranger, I would say, was Walter Kohtz. He wasn't working for the company at the time.

Q. He hadn't worked for the company for sometime?

A. I imagine a year or so.

Q. When you saw this bottle thrown, what did you do?

A. When Lucas threw the bottle, he beat his legs like this (illustrating by slapping knees with hands) and  
595 laughed, and then he turned and ran for the car.

Totten was already in the car. Totten was in the car first. He was standing at the car. He got, Lucas got in behind him, and they started toward Peoria. It was icy.

Mr. Knoblock: I didn't get that first.

(Answer read by reporter.)

A. It was icy that morning on the shoulder of the road, and I swung my car right around, swung easy on the ice, and took after them, gave chase.

Q. Let's go back a minute. How far was Lucas from this car when he threw the bottle?

A. About, I should say, ten or fifteen feet.

Q. Where was Totten at that time?

A. Totten was standing close to the car.

Q. The car was running?

A. Yes.

Q. The door was open?

A. Yes.

Q. Did you see any other bottles thrown there?

A. I didn't see any other ones thrown, no.

Q. Did you observe what happened in the locomotive when this bottle hit the locomotive?

A. The moment it hit the locomotive, flames come up all around the engineer.

Q. You say that, did you?

A. Yes, sir.

Q. And you turned your car and started after them?

A. Yes.

Q. Will you tell the court just how they proceeded  
396 from that point on toward Peoria?

A. They proceeded awful fast. I was right after them all the time, never out of their sight. I got in right behind their car about half way through Bartonville. I was pulling out, keeping to the left, so I could keep an eye on the car. I caught them just as they went into Adams Street.

Q. Just a minute, Mr. Kipling! Did you—How fast did you travel in following them?

A. I expect—I never noticed the speedometer, but I was going as fast as I could, and it was around seventy-five miles an hour.

Q. Was that the speed they drove?

A. Yes, sir.

Q. And you kept right after them?

A. Yes, sir.

Q. Where did you stop them?

A. Just south of Western Avenue where it crosses Adams.

Q. Just tell the court what happened there, and how you stopped them.

A. They slowed up just a little. I pulled up alongside their car, had my window open, and I had my gun up, and I said, "Stop," and they pulled over and stopped.

Q. Then what?

A. I got out and a bystander was standing there and saw it, and I said, "Will you call the police for me?" and he did.

Q. What did you do?

A. Waited there until the police came and got them.

Q. Did you threaten to shoot them?

A. No, sir.

597 Q. Did you ever threaten to shoot at them?

A. No, sir.

Q. Did you point a gun at them?

A. Only when I stopped them.

Q. Show how, then.

A. I had the wheel in my left hand, and I just put the gun in the right window and said, "Stop," and they pulled over and stopped. Did you get out of your car?

A. Yes.

Q. Where did you stand?

A. In front of the car.

Q. Did you keep your gun pointed at them?

A. No.

Q. And tell them twenty-five times that you were going to shoot them?

A. No.

Q. Did you tell them at all you were going to?

A. No.

Q. Did you curse them?

A. No.

Q. Did they say anything to you?

A. They were talking inside the car. I couldn't hear what they were saying.

Q. Were the windows up in the car?

A. Yes, sir.

Q. They stayed there?

A. Yes, sir.

Q. When the police arrived, what happened?

A. They took them in custody and up to the City Hall.

Q. And you went up and swore out a warrant?

598 A. Yes, sir.

Q. After that, what did you do? After you had them arrested at the City Hall, where did you go?

A. I went back out to see what damage was done to the train. I caught up with the train at Canton.

Q. Canton, Illinois?

A. Yes, sir.

Q. Did you examine the train there?

A. Yes.

Q. What did you find?

A. The engineer had been burned around the eyes and scorched, and his eyeballs scorched, and a place burned in the engineer's seat, and a glass on one of the gauges was broken, and the windows broken out of the cab.

Q. Did you at that time gather up anything in the cab of the locomotive?

A. Yes.

Q. What did you gather up?

A. I gathered up the parts of the whiskey bottle.

Q. How many whiskey bottle parts?

A. I only found one, but they said,—

Mr. Knoblock: I object.

Q. You can't tell what was said. Did you get possession of that?

A. Yes, sir.

Q. Did you go beyond Canton with that train that day?

A. No, sir.

Q. Did you see anyone else on the train that was injured, or had that man been removed?

A. He had been removed.

599 Mr. Knoblock: I object to that.

The Court: You found nobody else injured?

A. The engineer burned.



The Court: Was there anybody else injured? That is what he asked you.

A. I didn't see them, no.

Q. What was the engineer's name?

A. Mr. Gulick.

Q. Did you observe, when you examined that locomotive at Canton, any odor in the cab of the engine?

A. Yes, it smelled—

Mr. Knoblock: Objection.

A. It smelled—

Mr. Knoblock: I object.

The Court: He has answered. Objection overruled.

Q. What did you observe?

A. I smelled either gasoline or benzine.

Mr. Knoblock: I move it be stricken.

The Court: Do you know the smell of gasoline and benzine?

A. Yes, sir.

The Court: Have you had experience with it?

A. I have driven a car, I think, a great number of years.

The Court: Is that a customary thing to have about an engine? Gasoline or benzine?

A. It is used for fuel.

The Court: Is this one of the engines—

A. I mean automobile.

Q. He is talking about an engine.

600 A. No, cosl.

The Court: Is it used for lubrication, or otherwise, or starter, or anything of that kind?

A. No, sir, not on our road.

The Court: His answer may stand.

Q. I don't know whether I asked you: Did you go beyond Canton that day?

A. No.

Q. You came back to Peoria?

A. Yes, sir.

Q. I want to ask you with reference to December 31, 1941. At 7:30 A. M. on the lane leading from the hard road to the yards of the T. P. & W. in East Peoria, were you there?

A. Yes, sir.

Q. Who was with you?

A. Nobody; alone.

Q. Will you tell what happened at that time?

A. Do you want me to start at the beginning?

Q. Start at the beginning.

A. I was home, hadn't gone to work yet. One of my men called me.

Mr. Knoblock: I object.

Q. Did he ask you to go some place?

A. He asked me to come to the yard, they were stopping "rep" track men.

Q. You can't tell the conversation. Did you, in response to that request, go some place?

A. I went to the yards.

Q. How did you go?

A. I went in my car.

601 Q. That would be on the hard road east of East Peoria?

A. Yes, sir.

Q. Tell what happened.

A. As I entered the lane—it was awful icy that morning. I couldn't hardly stop. There was a line of men clear across the lane.

Q. How many?

A. I would say ten men across the lane. I tried to stop, and had a pretty hard job of stopping because it was icy. As I got stopped, I rolled down the window and said, "You oughtn't to stop men going to the 'rep' track, had you?" and Jerry Underwood spoke up and said, "We will stop them, and stop you, too." I said, "I have a right to come in and out of this lane whenever I deem it necessary." He said, "If you get out of the car, I'll beat your head off with the lantern." He had an electric lantern. I got up, but he didn't.

Q. You followed up his invitation, did you?

A. Yes, sir.

Mr. Knoblock: I didn't get it.

(Question read by reporter.)

Q. Did you observe what the men had?

A. Several had clubs.

Q. Describe the clubs.

A. There was a brake club, and one like the leg of a table (looked like elm or walnut)—a great big table—

Q. Where did they have those clubs?

A. Had them in their hands.

Q. What did they do?

A. Held them in their hands, and gathered around me.

602 Q. With the clubs?

A. Yes.

Q. What else was said?

A. Nothing else was said. I got out and said, "Beat me if you are going to", but they didn't beat me.

Q. Did you have any weapon at that time?

A. No, sir.

Q. I want to go back to the incident on the 2nd day of January. When you came back to this car of Totten's you have described, did you get out of that car with a sawed-off shotgun in your hand?

A. Yes, sir.

Q. When you got out of the car?

A. When I got out of the car.

Q. And walked over toward the car? I am talking about the time when Totten's car was down at the place on the road.

A. No. I just got out of my car.

Q. Did you have a sawed-off shotgun in your hand?

A. No.

Q. Did you reach for it?

A. No, sir.

Q. Or make any threats to those fellows?

A. No, sir.

Q. The only time you had the sawed-off shotgun is when you made the arrest, is it?

A. Yes, sir.

Q. Are you a deputy sheriff?

A. Yes, sir.

Q. Were you at that time?

603 A. Special deputy sheriff, yes, sir.

Q. Now, are you acquainted with Zeno Merrill?

A. Yes, sir.

Q. And were you present on December 31, 1941, when he had some difficulty?

A. I was called to that lane right after the difficulty.

Q. Tell us about that.

A. I ran up. One of my men came down to the office where I was doing some work. He says, "They are beating—"

Mr. Knoblock: I object.

The Court: State what you saw.

Q. What was reported to you? That they were having some trouble?

A. At the head of the lane.

Q. Did you go there?

A. I did. I ran up there.

Q. What did you find when you got there?

A. I found about twenty men. Some of them had hold of Zeno Merrill dragging him toward the car, pushing him and partly dragging him toward the car he started from company property in.

Q. You saw him start?

A. Yes.

Q. You found that car at the lane?

A. Yes.

Q. Is that the car they were trying to get him in?

A. Yes.

Q. What did you observe with reference to his condition?

A. I walked around to the right side of the car which was headed toward East Peoria, and I said, "Are you hurt?" and he was groaning and moaning, and he said,

"Yes, they have hurt me."

604 Q. Were they there at that time?

A. Yes.

Q. Did you see any defendants when you asked if he was hurt?

A. Yes, sir.

Q. Tell who you saw there.

A. I saw Ed Causey, Walter McMullen, Walter Kohtz, Walter McMullen,—

Mr. Knoblock: You named him once.

A. Walter Kohtz and Walter McMullen.

Mr. Heyl: We give him good measure!

The Court: Go ahead!

A. That is all I could identify at that time.

Q. Were there other men there?

A. Yes, there were more men than that there.

Q. Where were these men when they had hold of Zeno Merrill?

A. On the hard road, state road.

Q. What else happened? How far were they from the lane when you saw them first?

A. Oh, about thirty feet toward East Peoria, up on the shoulder.

Q. What else did you do in connection with that transaction?

A. Merrill was in the car. I told the driver to take him back to the yards, and I started to come back. They swarmed around me. Walter McMullen said, "You s. b., you are next. We are going to get you."

Q. What did you say?

A. "I don't think you will."

Q. Did they do anything more?

A. Came toward me with clubs.

Q. Who were the men that came toward you?

605 A. The ones I have mentioned.

Q. The ones you have described here?

A. Yes.

Q. Were those the same ones that had hold of Zeno Merrill?

A. Yes.

Q. What else happened in connection with that?

A. When they all started toward me with clubs, I pulled out my gun and said, "I don't think you are going to stop me."

Q. You took your gun out?

A. Yes.

Q. That settled it?

A. Yes.

Q. Did you use it?

A. I have never used a gun.

Q. Where were you?

A. On state property.

Q. Where were you then?

A. I was on the lane going back toward company property.

Q. Did they do anything more?

A. No.

Q. What did they have in their hands when they made this threat?

A. Clubs.

Q. The same clubs you have described?

A. Yes.

Q. How often did you see these men with clubs, or similar clubs?

A. Every day.

Q. Beginning what day?

A. Beginning the 29th of December.

Q. Until this restraining order was issued?

606 A. Yes, sir.

Q. Did you have any trouble since then? Since the restraining order?

A. I haven't had any trouble, no.

Q. Have you observed any trouble?

A. Only one item, yes.

Q. What was that?

A. I was called—I went to the junction of what we call the "P. & P. U. junction" where the P. & P. U. yards—where our trains go in their yards and theirs come in our yards, and found there had been kerosene thrown on the floor, all around on the floor, and there was charred paper there, and I asked the man in charge, switchtender in charge,—

Mr. Knoblock: I object.

The Court: State what you saw.

Q. When was this, Kip?

A. I don't know the exact date.

Q. Was it this last week?

A. It was after the restraining order.

Q. Where is this house you have talked about?

A. It's just east of Main Street in East Peoria.

Q. And what is that used for?

A. That's for switching, where we line switches to go into the "hump" yard, P. & P. U.

Q. Did you report that to anyone?

A. Yes, sir.

Q. Who did you report it to?

A. U. S. Marshal Robert Grant.

Q. What papers were strewn around there?

607 A. Charred paper that had been lighted or ignited.

Q. What kind of paper?

A. That was charred so bad I couldn't tell; probably newspapers.

Q. What else did you observe?

A. This is a pretty hard floor, I think an oak floor, and one part was charred pretty bad, but it didn't get started.

Q. Who called that to your attention?

A. The man that came on duty at 6 o'clock.

Q. In the morning?

A. Yes.

Q. Did you investigate it with anybody?

A. I was down at the junction the same time Mr. Grant was there.

Q. He was there at the time?

A. Yes.

Q. The United States Marshal?

A. Yes, sir.



Q. Did you observe the other picket lines during this strike, in addition to the one that was maintained at the lane leading to the property?

A. Yes. I was down at the west end of the yards several times.

Q. What did you observe there?

A. Same thing; men there with clubs and rocks.

Q. Did you find any rocks in any cars at any time?

A. No, sir.

Q. Did you make an examination of any of them?

A. No, I didn't have any business doing that.

Q. What did you see the men carrying, in addition to clubs, on these picket lines?

A. I seen them carrying clubs, and seen one man 608 at various times piling up rocks.

Q. Who were they?

A. Arthur Brewster, David White.

Mr. Knoblock: I didn't get that.

A. White, W-h-i-t-e.

Q. Where did you see that?

A. At one time I seen both of them, David White and Arthur Brewster, piling up rocks at the head end of the lane.

Q. That goes down to the yards?

A. Onto the highway 42, I believe it is.

Q. That goes to Washington?

A. Yes, goes to Washington.

Q. 24, isn't it?

A. 24, yes.

Q. What else did you see with reference to rocks?

A. And another time I was at the west end of the yards I seen Arthur Brewster piling up rocks there.

Q. Where is the west end of the yards?

A. Just west of the viaduct where 150 crosses over the track.

Q. Is that near the Lake Erie crossing?

A. Yes, sir.

Q. How many in the pile he had gotten together?

A. I imagine about forty or fifty rocks.

Q. What were the size of these rocks?

A. About the size of my fist, and smaller.

Q. What else did you see in that regard?

A. That's all.

Q. What—Did you see any of the other picket lines?

A. I didn't notice any of the picket lines.

609 Q. What about the freight house?

A. There wasn't very many there.

Mr. Heyl: Cross examine.

*Cross-Examination by Mr. Knoblock.*

Q. Now, Kipling, you mentioned here at the end you saw Arthur Brewster and David White piling up rocks at the end of the lane going to the roundhouse, is that right? Head of the lane going to the roundhouse?

A. Yes, sir.

Q. You never heard of any report at any time since the beginning of this strike of the throwing of a single rock at the head of that lane, have you?

A. No, I haven't.

Q. And you say again that you saw Arthur Brewster piling up some at the west end of the yards?

A. Yes, sir.

Q. You never saw him throw a single rock, did you?

A. No, I never.

Q. Now, you said that they were carrying clubs at the head of the lane, and you named, I believe, McMullen and some other gentleman as doing that. You never saw them take a swing or strike anybody with a club at the head of the lane, nor did you hear of any complaint with reference to that?

A. Yes, sir.

Q. Which one?

A. Mr. Phil Owen. He had the rear glass of his car broken out.

Q. Mr. Owen was on the witness stand, and didn't recall that.

610 Mr. Heyl: I object.

Mr. Knoblock: I withdraw that.

Q. You only know what Mr. Owen told you?

A. Yes, sir.

Q. You weren't there?

A. No, sir.

Q. With reference to the evening of December 31, 1941, do you know who took Zeno Merrill out of the yards that night?

A. Yes, sir.

Q. Who?

A. Herschel Thompson.

Q. Do you know what time they left the yards that evening?

A. I would say between 6:30 and 7 o'clock.

Q. And where were you when they left?

A. I was at my office.

Q. And that is located there at the roundhouse?

A. That's located just inside—just on our property, just inside; about thirty feet inside our property.

Q. The fact of the matter is, when you came back there that night, Zeno Merrill had already been taken away?

A. No, he had not.

Q. When you came up there that night, you were waving your gun hundreds of feet down the lane?

A. That is not true.

Q. And when you got up there, you said, "You s. b. s., I will take you on one at a time"?

A. No, sir.

Q. And one said, "What is the reason? Have you only got a single shot"?

611 A. No, sir.

Q. Isn't that what you said?

A. No, sir.

Q. When they asked you if you had a single shot, you turned around and went back to the roundhouse?

A. No, sir. I went back to the roundhouse, but they didn't ask me if I had a single shot.

Q. You don't know what went on at the end of the lane until you got the call?

A. That is right.

Mr. Heyl: It is self-evident.

Mr. Knoblock: He might have been standing there watching it.

Q. Who called you?

A. Herschel Thompson.

Q. How did he get in touch with you?

A. Came running down to the office.

Q. And Herschel Thompson left this place at the head of the lane, and ran down to your office, and how far was that from the head of the lane?

A. Approximately fifty yards, maybe a little farther.

Q. Isn't it about two blocks from where you were to the head of the lane?

A. I never measured it, but I say fifty to seventy-five yards.

Q. And when you got down there, the only men you saw

and recognized, as I understand it, was Ed Causey, McMullen and Walter Kohtz?

A. No, more men than that.

Q. Those are the only ones you recognized?

A. I gave you more men than those.

612 Q. Maybe you did. Who were they?

A. I recognized Walter Kohtz, Jerry Underwood,—

Q. Jerry Underwood? I have that.

A. —and Walter McMullen—

Q. I have that. And—

A. —and Ed Causey.

Q. I have that.

A. I don't know just how many more there was now.

Q. You don't recall seeing any more men than that?

A. Yes.

Q. You recognized them?

A. I don't know how many I could recognize or name.

Q. You say you never pulled your gun at all until they threatened you?

A. That is absolute facts.

Q. That is the truth, is that right?

A. That is the truth.

Q. And you talked to Zeno Merrill down there at the head of the lane that night, is that right?

A. After he had been attacked?

Q. Yes.

A. Yes, sir, I talked to him.

Q. You say someone was dragging him toward the car?

A. Pushing and dragging.

Q. Who was doing that?

A. I can only identify one man.

Q. Who is that?

A. Ed Causey.

Q. Ed Causey wasn't pushing or dragging, but assisting him?

613 A. No.

Q. He was pushing or dragging him, is that right?

A. Yes.

Q. What time did you leave the head of the lane there that night?

A. To go home?

Q. What?

A. What do you mean?

Q. When you left the vicinity of the head of the lane that night.

- A. To go home?
- Q. I don't know where you went.
- A. I went back to the yards.
- Q. What time was that?
- A. Between 7 and 7:30, right after it happened.
- Q. Now, with reference to December 30, 1941, at 7:30
- A. M., were you alone at the time?
- A. Yes, sir.
- Q. Did these pickets at the head of the lane ever stop you there?
- A. Every time I went in, they tried to stop me.
- Q. How did they try to stop you?
- A. By forming a line across the lane.
- Q. By simply walking in front of your car, or something like that?
- A. Yes, sir.
- Q. They never drew a club or threw a rock?
- A. Yes, Jerry Underwood said he would beat my head off.
- Q. I am coming to that, but no other time were you molested?
- A. Just stopped.
- Q. By having men walk in front of your car?
- A. Yes.
- Q. You say Jerry Underwood told you to get out, 614 and he would beat your head off, is that right?
- A. Yes.
- Q. How large a man is Jerry Underwood?
- A. Oh, I would say a hundred and fifty-five to sixty pounds.
- Q. About how tall?
- A. Five feet seven or eight.
- Q. How tall are you?
- A. Five feet eleven.
- Q. How much do you weigh?
- A. Two hundred and twenty-five pounds.
- Q. And you got out of the car—
- A. Yes, sir.
- Q. —on that occasion?
- A. Yes, sir.
- Q. He didn't do anything?
- A. No, sir.
- Q. Did you pull your gun that time?
- A. No, sir.
- Q. Not that time?

A. No, sir.

Q. Why not?

A. Because it was lying in the car beside me, and I don't want to use a gun.

Q. I see. Who else was there with Jerry Underwood at that time? You said there was ten or twelve men there.

A. I could name part of them.

Q. All right, give us some of them.

A. Jerry Underwood.

Q. I got that.

615 A. Walter McMullen.

Q. All right.

A. Clarence Blackburn.

Q. Blackburn?

A. Yes, sir. Howard Codlin.

Q. Howard what?

A. Codlin.

Q. C-o-d-l-i-n?

A. Yes, sir. Those are four I could identify that stood right around me.

Q. When you got in your car on that occasion, you went back to the yards, is that right?

A. Went on to the yards, yes, sir.

Q. What date was it that McMullen said to you, "You are next," and "I said, 'I don't think you will,'" or something like that, and started toward you with a club, and you pulled a gun? When did that occur?

A. That was the night that Merrill got beat up on.

Q. And McMullen went after you?

A. McMullen made the threat, and all of them started from around me.

Q. You pulled your gun?

A. Yes, sir. I am not going to be mobbed.

Mr. Knoblock: I move to strike the latter part.

Mr. Heyl: That is a good answer.

The Court: It may be stricken, the latter part only.

Q. What time of the evening did McMullen come toward you and say that?

A. Between 7 and 7:30.

Q. You name Walter Kohtz as being on the picket line that night?

616 A. Yes, sir.

Q. You know of your own knowledge he hasn't been an employee of the T. P. & W. for sometime, don't you?



A. He was on the picket line, or had a club or table leg at this time.

The Court. Answer his question.

(Question read by reporter.)

A. Yes, sir.

Q. You and Frank Lucas, are you friendly?

A. As far as I know.

Q. You have never had any falling out or hard feeling toward Frank Lucas?

A. No, sir.

Q. He used to be under you, is that right?

A. Yes, sir.

Q. How long was he under you?

A. About a year and a half.

Q. You never had any hard feeling toward John Gimming?

A. No, sir.

Q. You never made any threat toward Frank Lucas prior to the time of this strike?

A. No, sir.

Q. And you never said anything like that to John Gimming?

A. No.

Q. And you and Gimming have been good friends?

A. Yes, sir.

Q. How long have you known Gimming, and been his good friend?

A. Ever since I have been in the company's employ.

Q. And when Frank Lucas changed jobs and took  
617 another job other than being one of your assistants,  
there was no falling out at that time?

A. No, sir.

Q. You have never made any threat at any time you are going to get Frank Lucas?

A. No, sir.

Q. There is no desire on your part to pick on him, or to be angry at him in any way, is there?

A. No, sir.

Q. As far as you know, he didn't have any reason to be angry at you?

A. No, sir.

Q. And that same thing is true of John Gimming?

A. Yes, sir.

Q. Now, on the day of January 2, 1942, what time did this train leave the yards at East Peoria?

A. Approximately 7:30 A. M.

Q. What was the name of the train? What was it called?

A. Extra west.

Q. Do you know the number?

A. No, I don't.

Q. Do you know who the engineer was?

A. Yes, sir.

Q. There were some armed guards on the train that day, weren't there?

A. Yes, sir.

Q. What were their names?

A. There was Harold Kane.

Q. Where is he from?

618 A. Bushnell, Illinois.

Q. That is your former home?

A. Yes, sir.

Q. Where was the other armed guards from?

A. C. E. James.

Q. Where was he from?

A. Bushnell, Illinois.

Q. Anybody else?

A. Stephen Burbage.

Q. Where is he from?

A. Peoria, Illinois.

Q. And who else?

A. Ray Cook.

Q. Where is he from?

A. Macomb, Illinois.

Q. And who else?

A. Raymond Wheeler.

Q. Where is he from?

A. Canton, Illinois.

Q. And who else?

A. Honeycutt. I don't know his first name.

Q. Where is he from?

A. Canton, Illinois.

Q. And who else?

A. Harold Kratz.

Q. Where is he from?

A. Peoria, Illinois.

Q. Who else?

A. A fellow by the name of Blanchard.

619 Q. Where was he from?

A. Chicago, Illinois.

Q. Who hired him?

A. I did.

Q. From whom did you hire him?

A. He called me long distance.

Q. And offered his services?

A. Yes, sir.

Q. Had you known him before?

A. No, sir.

Q. Who else was on that train? I mean special agents.

A. That's all that were on that train that I can—

Q. Do you know a man from Chicago by the name of Goldby?

A. Yes, sir.

Q. How long have you known him?

A. Not very long.

Q. When did you first get acquainted with him?

A. Several days after this strike was in progress.

Q. What is your best judgment?

Mr. Heyl: Just a moment. I want to object as not cross examination.

The Court: I don't know where it is cross examination unless you are talking about a special agent.

Mr. Heyl: He is not a special agent.

The Court: Is he a detective?

A. No.

The Court: Was he on this train?

A. No, sir, he was not.

Mr. Knoblock: I am trying to find out—

620 Mr. Heyl: The witness said he wasn't.

Q. Did he do special agent work?

Mr. Heyl: I object as not cross examination.

The Court: I think he may answer.

A. No, not that I know of.

Q. Did Goldby bring any special agent men with him?

A. No, sir.

Q. Did he bring anybody with him at all?

A. As far as I know, he didn't.

Q. On this train January 2, there were eight special agents on this train?

A. Yes, sir.

Q. And they all carried guns?

A. Yes, sir.

Q. Were they deputy sheriffs or commissioned in any way?

A. Some of them were and some of them weren't.

Q. Which ones were not?

A. Kane, James, Cook, Blanchard, Wheeler and Honeycutt; I think.

The Court: Were not?

A. Were not.

Q. You say you have a sheriff's commission? It's only in Tazewell County, isn't it?

A. Tazewell County. I can use it for—

Q. I am not asking you that. You are deputized out of Tazewell County, is that right?

A. Yes, sir.

Q. Bringing your attention to the incident there you said occurred about opposite the Allied Mills when you mentioned Kneisley and Newdigate, it's a fact you called one of the special agents and instructed him to pull a gun on Kneisley?

A. I did not.

Q. You called him over, and he pulled his gun?

A. He did not. He didn't even come off the railroad property.

Q. Answer the question. The special agent didn't come over there?

A. No, sir.

Q. He came down?

A. I motioned for him to get off the engine, and go down the right-of-way.

Q. He uncovered his gun?

A. He did not.

Q. He had his gun out?

A. He did not.

Q. What was that special agent's name?

A. Kane.

Q. From Bushnell?

A. Yes, sir.

Q. Newdigate and Kneisley never threw any rocks or shook any clubs?

A. Yes, they did.

Q. Oh, they did?

A. Yes.

Q. Who else was with them?

A. They didn't get out of the car. John Gimming was out of the car, and Kneisley was out of the car.

Q. John Gimming and Kneisley got out? Whose car was Kneisley in?

A. I don't know. He came running from the west farther with a club in his hand.

Q. What direction was Gimming's car headed in?

622 A. It was headed west.

Q. Where was your car at that time?

A. Right directly in front of him.

Q. Were you out of your car?

A. No, sir.

Q. What was the condition of the windows in your car and the back window?

A. The back window?

Q. Yes.

A. The back window was pretty well frosted up, but I could see through it.

Q. How about the side window?

A. I had them rolled down.

Q. Both side windows?

A. No.

Q. Which one?

A. Left front.

Q. How cold was it that day?

A. Pretty cold.

Q. How long had it been rolled down?

A. All along the train.

Q. Did you have your sawed-off shotgun lying in the seat?

A. I had it lying in the seat, yes.

Q. How long is that gun?

A. Oh, about thirty-six inches.

Q. And what calibre is it, or gauge?

A. Twelve gauge.

Q. How many shots will it shoot?

A. Five.

623 Q. You had it loaded that day?

A. Yes, sir.

Q. These special agents that were on this train, were they more or less under your supervision?

A. Yes, sir.

Q. Who hired those men?

A. I did.

Q. How much did you pay them a day?

Mr. Heyl: I object; immaterial.

The Court: Sustained. I can't see where it is material.

Q. What direction was Newdigate's car there at the Allied Mills? Which direction was it pointed?

A. Headed back to Peoria.

Q. Who was with Newdigate?

A. I don't know. They didn't get out of the car.

Q. Were their windows so frosted you couldn't see?

A. They were frosted.

Q. That was the reason?

A. Yes.

Q. If you couldn't recognize the rest, how could you recognize Newdigate?

A. He opened the door.

Q. Could you see the man in the right front seat by him?

A. No.

Q. Did Newdigate or Kneisley say anything?

A. Kneisley waved his club and said, "Let's go get them."

Q. Who did he say it to?

A. To the men in the car and Gimming that was out on the road.

624 Q. Did they go?

A. They went part way, but not on the right-of-way.

Q. They never went on the right-of-way?

A. No.

Q. There was Gimming and Newdigate and Kneisley there. Was that all you recognized?

A. That's all.

Q. Could you tell how many men were in Newdigate's car?

A. No, I couldn't.

Q. How many were in Gimming's?

A. I know that. They followed me all the way from Peoria. Gimming was out on the road, and Brewster was in.

Q. Gimming and Brewster never made any threat toward you that day?

A. Yes.

Q. What did they do?

A. Gimming said, "You are not coming back off the west end, and none of the rest of them."

Q. Where did he say that?

A. Edmund Street crossing going into Hiram Walker's.

Q. He didn't follow that up with any show of force?

Mr. Heyl: I object.

The Court: Was that all he did?

A. He shook his fist at me.



Q. And what else?

A. That's all.

Q. Who was present when that was done?

A. Arthur Brewster, he and I.

Q. And just you three?

A. Yes.

625 Q. Now, when you went on down to Hollis where you say you saw this bottle thrown, who was directly in front of you there?

A. Who was directly in front of me?

Q. Yes.

A. People lined up around the road, men lined up throwing stones and the man that threw the bottle.

Q. What direction does that highway run there?

A. Well, it runs southwest, I would say.

Q. It runs generally in a northerly and southerly direction, does it?

A. Yes.

Q. What side of the hard road did you park on?

A. Right side.

Q. And what side of the road was the Totten car on?

A. Left side.

Q. How far was Leo Totten out of that car?

A. Not very far; just standing right close to it.

Q. With the door open?

A. Yes.

Q. Both doors?

A. One door.

Q. Which door was closed?

A. If he was headed back toward Peoria, it was the left hand side, driver's side.

Q. The other one was closed?

A. Yes.

Q. Which side was Totten standing on?

A. Right hand side.

Q. That is the side nearest the railroad track?

626 A. Yes.

Q. How near was he to the railroad tracks?

A. He was pretty close on the shoulder.

Q. How far was he standing from Lucas?

A. Lucas was about ten or fifteen feet from the car.

Q. How far was Totten, in feet, from the car?

A. Just standing right close to it.

Q. What time of the day was this?

A. About—Between 8 and 8:30; approximately 8:30, I would say.

Q. How far had you parked your car from the Totten car?

A. About ten or fifteen feet.

Q. About ten or fifteen feet?

A. Yes.

Q. And you had your left front window rolled down?

A. Yes, sir.

Q. And you had your sawed-off shotgun in there by the side of you?

A. Yes, sir.

Q. You didn't raise it, though?

A. No.

Q. Up until that time you were still very friendly with Frank Lucas?

A. Yes, sir.

Q. And you are still friendly with him?

A. Yes, sir.

Q. As I understand it, you were within ten to fifteen feet of the Totten car, and Lucas was about fifteen feet away from it, where you say you saw him throw the bottle?

A. Yes, sir.

Q. You saw him throw it?

A. Yes, sir.

627 Q. You saw it happen?

A. Yes, sir.

Q. Why didn't you stop them there?

A. They ran and got in the car.

Q. He was fifteen feet from the car?

A. He ran and got in the car, and I got in quick and swung around behind them.

Q. He was fifteen feet from his car?

A. Yes.

Q. That is all you were from the Totten car?

A. From the Totten car? Yes, sir.

Q. You had your sawed-off shotgun lying there, didn't you?

A. Yes, sir.

Q. It was available to halt the men right at that place, wasn't it?

A. Yes.

Q. But you didn't do it?

A. They took off, and I took out after them.

Q. Then you drove seventy to seventy-five miles an hour until you caught them at Western Avenue?

A. Yes, sir.

Q. Did you go through Bartonville that fast?

A. Yes, sir.

Q. Did you go over the viaduct that fast?

A. Over the viaduct?

Q. Yes.

A. Yes, sir.

Q. Did you go up South Adams Street that fast?

A. I slowed down at that bend where I go onto 628 Washington, and so do they—or on Adams.

Q. Did they swing on Washington or—

A. They turned up Adams to the left, and we both slowed up.

Q. You both slowed up?

A. Yes, sir.

Q. With reference to them stopping their car, you did nothing except honk your horn?

A. I pulled up beside them and stuck my gun in the window and said, "Pull over."

Q. They ~~had~~ already stopped at that time?

A. They ~~had~~ not.

Q. You crowded them to the curb?

A. I told them to pull over, and they did.

Q. And you pulled alongside of them?

A. Yes.

Q. Did you honk your horn any time?

A. Yes, I did going up South Adams.

Q. How many times did you honk?

A. Several times.

Q. Could you see them through the back window?

A. Yes.

Q. I mean through their back window.

A. Yes.

Q. Their back window was pretty clear?

A. Pretty clear, yes.

Q. You could see them?

A. I could see them, yes.

Q. And you told them to pull over?

A. Yes.

629 Q. Did you have your window rolled down?

A. Yes.

Q. Which window?

A. Right hand window.

- Q. Where did you roll it down?  
A. I had it rolled down all the time.  
Q. I understood at Hollis you had the left rolled down?  
A. I had them both rolled down.  
Q. At Hollis did I understand you to say you only had the left front window rolled down?  
A. I wasn't at Hollis. We didn't get that far.  
Q. Where you say this throwing took place?  
A. I had them both rolled down when I took after this car on the way, on the run, so I could see.  
Q. When you stopped those men at Western and Adams, where was their car?  
A. Pulled over to the right hand curb.  
Q. And how far from the intersection?  
A. Oh, probably a hundred yards maybe. I don't know just how far.  
Q. A hundred yards would be almost in the middle of the block?  
A. There is no street that turns off to the right for a long ways.  
Q. Which side of the intersection of Western and Adams were you on?  
A. South side.  
Q. And you had not reached Western Avenue?  
A. No, hadn't reached it yet.  
Q. You say you were about a hundred yards from there?  
A. Fifty to a hundred yards.  
Q. Where was your car parked?  
A. My car was parked right beside theirs.  
630 Q. Is that a block with the street car tracks?  
A. Yes, sir.  
Q. Did you have any trouble with the street car motor-man?  
A. No, sir.  
Q. Did he ask you to move your car?  
A. No, sir.  
Q. Did you tell him he could let his damned car sit there?  
A. No, sir.  
Q. You got out of your car and had your sawed-off shotgun, is that right?  
A. Yes, sir.  
Q. When you pulled up there, you just held up your gun and said, "Stop"?  
A. I laid it right on the window.

Q. On the window sill, and said, "Stop"?

A. Yes.

Q. Did you say it in that tone of voice?

A. Yes. I said, "Pull over."

Q. Then there was some bystander there, and you asked him to call the police?

A. Yes.

Q. And you made no threats of any kind?

A. No, sir.

Q. You didn't say to Frank Lucas that you were going to shoot him?

A. No, sir.

Q. You didn't say, "Frank Lucas, say your prayers. I am going to kill you right here"?

A. No, sir.

Q. You are sure of that?

63L A. Yes, sir.

Q. You never said to Jack Totten, "Jack Totten, I am going to get you, too"?

A. No, sir.

Q. "I want to do the whole job right here"?

A. No, sir.

Q. You never said at least fifteen to twenty or twenty-five times you were going to kill them right there?

A. No, sir.

Q. You made no threat toward them on that occasion?

A. No, sir.

Q. You weren't standing there with your right hand on the trigger and the thumb of your right hand shifting that safety catch back and forth?

A. No, sir.

Q. You never had your finger on the trigger at any time?

A. No, sir.

Q. You never had your thumb on the safety catch at any time?

A. No, sir.

Q. You never used any swear words at any time?

A. No.

Q. You never used any vile or opprobrious language at any time?

A. No, sir.

Q. How long did you hold them before the Peoria police came?

A. It seemed like a long time.

Q. How long?

A. Twenty to thirty minutes.

Q. Did you talk with them during that twenty to thirty minutes?

A. No.

632 Q. Just stood, and they sat there?

A. The fact is, I never had a shell pumped in the barrel.

Q. That is what you say now?

A. That is what I say now. I will say it any time.

Q. If you didn't have a shell in the barrel, how did you intend to guard them?

A. I didn't say that. I like to live, and let other people live.

Q. You never said you were going to kill them?

A. No, sir.

Q. You never waved your sawed-off shotgun around in the air at all?

A. No.

Q. Did you see some people come up there?

A. Oh, yes, there was quite a crowd.

Q. What seemed to cause the crowd to gather?

A. They seen two cars pulled up each side, and I was standing out by the car with a sawed-off shotgun.

Q. Quite a crowd came?

A. Quite a crowd came, yes.

Q. How many?

A. I couldn't say. There was a street car stopped there. There were several cars. I never counted them.

Mr. Knoblock: I think that is all.

Mr. Heyl: I want to ask one question.

The Court: All right!

Mr. Knoblock: One question I have that I forgot.

The Court: Go ahead!

Q. Isn't it a fact that quite frequently coal oil is used as a torch in a locomotive to start it?

A. To start it?

633 Q. Yes, or for light.

A. I couldn't tell you. I am not connected with the operation of trains.

Q. And I understand you to testify on direct examination no gasoline or benzine was ever used around the cab?

The Court: Don't argue with the witness.

He says now he is not familiar with it.

Anything else?



Mr. Knoblock: That's all.

The Court: Anything on your part?

Mr. Heyl: This, probably should have been direct.

The Court: All right!

*Further Direct Examination by Mr. Heyl.*

Q. Now, Mr. Kipling, I will ask you if you recognize the names of the persons who appear on that photograph?

The Court: Names on what?

Q. Do you recognize the individuals whose pictures appear there?

A. Part of them.

Q. Who are they? Who are the two fellows with clubs over their backs and shoulders? Give their names.

A. Kirk. We call him "Jake" Kirk.

Q. Is that C. H. Kirk? Clement H. Kirk?

A. There are three or four Kirks. I don't know their right names. Jake Kirk.

Q. Who is that (pointing)?

A. The man sitting down on the bench.

Q. With the club over his shoulder?

634 A. Yes.

Q. Who is the other fellow with a club over his shoulder?

A. I can't recognize him.

Mr. Knoblock: May I see that?

Mr. Heyl: No, you can't see it now.

Mr. Knoblock: I think I should see it.

The Court: I think he is entitled to cross-examine on it.

Mr. Heyl: I don't think he is.

The Court: Then the examination may be stricken.

Mr. Heyl: Then I will use somebody else to testify regarding it.

The Court: The last part of the evidence may be stricken.

Mr. Heyl: I will identify it by somebody else.

The Court: Is that all, gentlemen?

As far as this case is concerned, we will be recessed until 2 o'clock this afternoon.

Trial Recessed at 12:45 o'clock P. M.

Trial Resumed at 2 o'clock P. M.

635 E. R. FUNK, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to.

*Direct Examination by Mr. Elliott.*

Q. You may state your name.

A. E. R. Funk.

Q. How old are you, Mr. Funk?

A. Fifty-three.

Q. Where do you live?

A. Peoria.

Q. By what company are you employed?

A. T. P. & W. Railroad.

Q. In what capacity have you been employed for the past eight years?

A. Road foreman of engineers.

Mr. Knoblock: I didn't get it.

A. Road foreman of engineers.

Q. On January 2 of this year were you on duty?

A. Yes, sir.

Q. At about what time did you go on duty that morning?

A. 7 A. M.

Q. At what place?

A. At the East Peoria yard.

Q. And who, if anyone, had to do with getting the engine ready to go out that morning?

A. Engineer Gulick and Firemen O'Brien and Mc-Aroy.

Q. Were you there at the time they got ready?

A. Yes, sir.

Q. What sort of fuel did they use in the engine?

636 A. Bituminous coal.

Q. What time did you depart from the Peoria yard that morning?

A. About 7:40 A. M.

Q. What was your train known as?

A. An extra west.

Q. What was the number of your engine?

A. 41.

Q. And the train was designated as extra 41 west, wasn't it?

A. Yes, sir.

Q. In accordance with the number of your engine?

A. Yes.

Q. Who did you say your engineer was?

A. Gulick.

Q. And who was the fireman?

A. O'Brien and McAvoy.

Q. And who was your head brakeman?

A. Ruddles.

Q. Were they all riding in the engine?

A. Yes, sir.

Q. Did you ride on the engine as you started out?

A. Yes, sir.

Q. Did you have any special agents on the train that morning?

A. I think there was about four.

Q. Who was the conductor of that train?

A. Taylor.

Q. Dick Taylor?

A. Yes, sir.

Q. Also known as Richard Taylor?

A. Yes, sir.

637 Q. As you left the East Peoria yards, was there anything out of the ordinary occurred until you got over to near the Union Station, Peoria?

A. No, sir, we encountered no difficulty whatever.

Q. And about how many cars did you have on your train?

A. About twenty-five.

Q. And were those cars for different points along the road?

A. Yes, sir.

Q. Any of them bound for Keokuk?

A. Yes, sir.

Q. What, if anything, occurred near the point of the Star Union Distributing Company?

A. I was struck by a piece of slag or molder's core about three inches in diameter, and was struck on the right chest.

Q. What side of the engine were you on?

A. I was on the right side.

Q. And where were you standing with reference to the engineer?

A. I was right ahead of the engineer.

Q. And through which window of the cab did this molder's core come?

A. On the right side.

Q. What effect did it have when it struck you?

A. It dazed me momentarily.

Q. What did you say that article was?

A. It was a piece of slag or molder's core.

Q. About the size of it?

A. About three inches in diameter.

Q. And what did you say the weight of it was in pounds?

A. About three pounds.

Q. Did you see who threw the article?

638 A. No, at that time I was looking ahead, and, naturally, at that point I didn't expect any violence or any cowardly attacks.

Mr. Knoblock: I object to that.

The Court: Just answer the question.

A. I didn't expect any—

The Court: Read the question.

(Question read by reporter.)

A. No, I didn't.

Q. Did you, immediately following being struck, recognize anyone there?

A. Why, one of those—There was three, and one of those looked like an ex-employee by the name of Kohtz.

Q. Walter Kohtz?

A. Yes, sir.

Q. Had he previously worked for the T. P. & W.?

A. Yes, sir.

Q. Where was this with reference to the Union Station?

A. I would say about, possibly, a mile or a mile and a half west of the Union Station.

Q. Had this Kohtz, Walter Kohtz, been working for the railroad just previous to that time?

A. No, sir.

Q. About how long before had he worked for the railroad?

A. About three years.

Q. And had you or not observed him previous to this time after the strike with the pickets?

A. No, this is the first time.

Q. First time you saw him?

A. Yes.

639 Q. Was he in the vicinity of the person who threw this core or slag?

A. Yes.

Mr. Knoblock: I object to that.

Q. Did you see him in the vicinity of where they came from?

A. Yes, sir.

The Court: The objection is overruled.

Q. You say you were looking ahead?

A. Yes, sir.

Q. And after you were struck, which direction did you cast your eyes?

A. Well, like I say, I was dazed momentarily, and, naturally, I looked in the direction from which the stone was thrown.

Mr. Knoblock: I object.

Q. Is that where you saw Kohtz?

A. Yes, sir.

Q. About how fast was your train moving at that time?

A. I imagine about fifteen miles per hour.

Q. And which part of the cab did it come in?

A. From the right side.

Q. What, if anything, did it do to the cab or the glass?

A. It broke the right windshield glass.

Q. Where is the windshield?

A. It's attached to the side of the cab window.

Q. To protect your eyes as you are looking forward?

A. Yes, sir.

Q. Was there any other damage that you noticed to the engine at that place?

A. None at that time.

640 Q. What did your train do?

A. We proceeded on to the M. & St. L. crossing.

Q. Where is the M. & St. L. crossing with reference to Bartonville or South Peoria?

A. Well, it's—I would say it's about a mile and a half east of Bartonville.

Q. Toward Peoria?

A. Yes, sir.

Q. Is that a regular crossing that your train passes?

A. Yes, sir.

Q. Is that the junction with the M. & St. L. Railroad?

A. Yes, sir.

Q. As you got to the M. & St. L. crossing, what, if anything, occurred?

A. Why, nothing. We picked up orders at the C. B. & Q. tower and stopped for the M. & St. L. crossing, and

then, as we passed the highway crossing just west of the tower, there was several automobiles of strikers, striking employees. There was nothing done other than the man heckled us as we went by.

Q. Did you observe or recognize any of the men that were there?

A. Yes, sir.

Q. Tell us who you observed.

A. Brewster and McMullen.

Q. Is Brewster a former employee?

A. Yes, sir.

Q. And Brakeman Walter McMullen?

A. Yes, sir.

Q. What did you do after you went on down beyond that?

A. I went down to the west end of the M. & St. L. 641 transfer and set out two cars and picked up one.

Q. Then what did you do?

A. Then proceeded on to the west end of track 61, which is opposite the Allied Mills in Bartonville.

Q. What did you do there?

A. Set out ten cars.

Q. What did you observe while you were setting out those cars?

A. Why, some of the striking employees walking up and down the hard road and doing considerable heckling at the time.

Q. Did you recognize any of them?

A. Yes, sir.

Q. Tell us who you recognized.

A. Conductor Kneisley,—

Q. Is that George Kneisley?

A. Yes, sir. —and Gimming and Brewster.

Q. See anything of McMullen there?

A. Yes, sir.

Mr. Knoblock: I object.

Q. Did you see anybody else?

A. No, sir, not that I recognized.

Q. Were there more than the number you have named there?

A. Yes, there were.

Q. What were they doing?

Mr. Knoblock: I object as having been asked and answered.

A. They were parading.



The Court: He has answered. Objection sustained.

A. Running up and down the hard road.

Mr. Elliott: The court sustained the objection.

642 Q. Who was running the engine?

A. Engineer Gulick.

Q. Did you proceed on beyond the Allied Mills then?

A. Yes, sir.

Q. To about what distance beyond the Allied Mills?

A. I would say about two thousand feet.

Q. And what, if anything, did you notice at that time?

A. Nothing at all. I just instructed the fireman to open the blow-off cock, when we were suddenly bombarded with stones from the right side.

Q. The right side of your engine?

A. Yes, sir.

Q. Was that next to the highway?

A. Next to the highway.

Q. Is next to the highway on— Is the highway on the same level as the railroad, or a little higher?

A. It's a little higher.

Q. Tell us about those stones, character of the stones and extent of the bombardment.

A. They were coming so fast, those that came through the cab windows. They would vary in size from an inch and a half to two or three inches in diameter.

Q. Did any of those stones strike anybody in the cab?

A. Yes, sir.

Q. Who?

A. One of the special agents.

Q. Did you notice anything else come into that cab, aside from the stones?

A. Couple of bottles of some kind of inflammable liquid.

643 Q. What happened when those bottles were thrown in?

A. One struck the engineer and was deflected to possibly the feed valve of the locomotive and bursted and was ignited from the heat from the door, and the cab was a mass of flaming clothing.

Q. What happened to the engineer's clothing?

A. Part of the liquid splashed on his overalls, and he was a mass of flames, also.

Q. Was there more than this bottle thrown in?

A. There was two.

Q. What happened when the second bottle came in?

A. It ignited.

Q. What part of the engineer's clothing caught fire?

A. Around his shoulder, and from his waist down to his knee.

Q. Did you observe whether anything happened to any portion of his face?

A. I couldn't see for the flames.

Q. Describe the extent of that flame.

A. Well, the inside of the cab was enveloped in flames.

Q. The whole inside of the cab?

A. Yes, sir.

Q. Who else was in there besides you and the engineer and fireman?

A. There was the head brakeman, Ruddles, and the four special agents.

Q. Did you notice anything happen to either of the special agents?

A. Yes, one of them sustained a broken knuckle and his hand was badly cut.

Q. That occurred at about the time these glass bottles were thrown in?

A. Yes, sir.

644 Q. How long did that bombardment of stones continue?

A. Oh, it's hard to tell; possibly a minute and a half to two minutes.

Q. Tell us approximately how many were in the crowd that was gathered along there throwing stones.

A. I couldn't say. I was on the left side of the locomotive.

Q. What is your best judgment as to the number of stones that hit the engine or came in?

A. It would be hard to say. I couldn't tell, there was so many of them.

Q. Did you continue on that engine and train until it went on west?

A. Yes, sir.

Q. You may state whether or not you saw any objects in the cab after this bombardment.

A. Well, just the fragments from the bursted bottles.

Q. Who was the special agent that had his knuckle broken?

A. I think his name was James.

Q. Where was he taken?

A. The train was stopped just west of the highway at

Mapleton, and one of the special agents had taken him to the hospital at Canton.

Q. Did you continue on with the train then?

A. We continued on with the train.

Q. While this bombardment was going on of objects being thrown, and these bottles were thrown, I will ask you whether or not you heard any shots.

A. No, I didn't.

Q. Did you at any time that morning hear any shots?

A. No, I didn't.

645 Q. Did anyone from the cab do any shooting?

A. Not that I know of.

Q. You didn't hear any?

A. I didn't hear any.

Q. Did any of them have any guns out?

A. No, I didn't see any.

Q. You were in the engine cab all the time?

A. All the time, yes.

Q. After Engineer Gulick was hit, what, if anything, did you do with reference to running the engine?

A. He complained about his vision.

Q. What he said wouldn't be proper.

A. I run the engine on account of his vision being impaired.

Mr. Knoblock: I move the latter part be stricken.

The Court: I think it may stand.

Q. To what point did you run the engine?

A. LaHarpe.

Q. Did the rest of the train then go on to Hamilton?

A. Yes, sir.

Q. You left the train at LaHarpe?

A. I continued on to Hamilton.

Q. You continued on to Hamilton?

A. Yes, sir.

Q. What did you do with some of the cars that were in the train?

A. Some of them were set out at LaHarpe.

Q. The cars that were taken to Hamilton, what was done with them?

A. They were set out at Hamilton.

Q. Did you have anything to do with those cars the next morning?

A. No, sir.

646 Q. Did your train or not go over to Keokuk the next morning?

A. It did not.

Q. It did not go?

A. No.

Q. On that train you didn't go over?

A. No.

Q. I understand you to say some of these cars were destined for Keokuk and beyond?

A. Yes, sir.

Q. But you didn't take them over?

A. No, sir.

Q. Those are the cars you left in Hamilton?

A. Yes, sir.

Q. Is that just across the river from Keokuk?

A. Yes, sir.

Q. From what point did these bottles come—were they thrown—with reference to the crowd you had seen throwing stones?

A. Well, from the same direction, from the hard road.

Q. And over what space of distance was it that they continued to throw?

A. I imagine the distance there is about twenty-five feet.

Q. They were all gathered about that point?

A. Of course, I didn't recognize or see any of those that were throwing the stones.

Q. But stones were thrown at about the time the bottles were thrown?

A. Yes.

Mr. Knoblock: I object.

The Court: Objection sustained as repetition.

Mr. Elliott: I think that's all.

647 *Cross-Examination by Mr. Knoblock.*

Q. Where do you live here in Peoria, Mr. Funk?

A. My local address, 518 Hamilton.

Q. 518 Hamilton?

A. Hamilton, yes, sir.

Q. And how long have you been employed by the T. P. & W.?

A. Oh, better than eight years.

Q. And when you first went into their employ, what was the nature of your work?

A. I was representing several railway supply companies.

Q. Did I understand you to say "several railway supply companies"?

A. Yes, sir.

Q. How long have you been road foreman?

A. Better than eight years.

Q. And your original employment with the T. P. & W. was that of road foreman?

A. Yes, sir.

Q. Are you also— Have you been offered the bonus of \$10.00 a day over and above your salary?

A. No, sir.

Q. You don't get anything extra?

A. No, sir.

Q. Drawing your attention to January 2, 1942, you say you first reported at the East Peoria yards of the plaintiff at about 7 in the morning?

A. Yes, sir.

Q. And Gulick was the engineer, is that right?

A. Yes, sir.

Q. What's his first name?

648 A. Omar.

Q. Where does he live?

A. In East Peoria.

Q. And how long has he been employed by the T. P. & W.?

A. Since the 29th of December, 1941.

Q. 1941?

A. Yes.

Q. Do you know where he had been employed before that?

A. No, I don't.

Q. This man O'Brien, what was his first name?

A. I couldn't tell you.

Q. What was his capacity that day?

A. One of the firemen.

Q. Did the engineer have a torch on that locomotive that day?

A. No, sir.

Q. Is it customary to use a torch on that locomotive?

A. Yes, sir.

Q. But he didn't have one along that day?

A. No, sir.

Q. In the torch—or in the torch there is some coal oil or kerosene?

A. In the torch?

Q. Yes, sir.

A. Yes, sir.

Q. That can become ignited if overheated?

A. If it's near the firebox, yes.

Q. Do you know why it wasn't carried along that day?

A. No, I don't.

Q. But that was unusual;—

649 A. Yes, it is.

Q. —that it wasn't along? What was McAvoy's position on that train that day?

A. One of the firemen.

Q. Was either McAvoy or O'Brien a student fireman?

A. Student firemen, yes, sir.

Q. What was McAvoy's first name?

A. I couldn't say.

Q. Do you know where he was from?

A. No, sir.

Q. Do you know when he went into the employ of the T. P. & W.?

A. No, sir.

Q. Do you know approximately when he did?

A. Well, I couldn't say to that, no.

Q. Had he been a former employee for a year or two?

A. No, he hadn't.

Q. Approximately how long had he been employed?

A. I couldn't say.

Q. Had he been employed as long as a week?

A. I couldn't say as to that.

Q. This man Ruddles, what was his first name?

A. I couldn't tell you that.

Q. Do you know where he was from?

A. No, sir, I couldn't.

Q. And his capacity was that of a head brakeman?

A. Yes, sir.

Q. Where did he ride on the train?

A. In the locomotive cab.

Q. In the locomotive cab, and how long had he  
650 been employed by the T. P. & W.?

A. I couldn't tell you that.

Q. Had he been employed as much as several months?

A. I couldn't say.

Q. You left the yards at approximately 7:40 A. M.,  
is that right?

A. Yes, sir.



- Q. Who was running the engine at that time?  
A. Gulick; Engineer Gulick.  
Q. Where were you?  
A. On the right side, right directly behind him.  
Q. Right behind him?  
A. Yes.  
Q. Where was McAvoy and O'Brien?  
A. In their usual positions as locomotive firemen.  
Q. Where is that?  
A. One on the deck, and one on the left seat box.  
Q. Where was Ruddles riding?  
A. Up ahead of the fireman on the left side.  
Q. Where were the four special agents?  
A. They were in the gangway, and one of them sat by the brakeman on the left side.  
Q. They all carried guns, didn't they?  
A. I think they did.  
Q. Do you know what their names were?  
A. No, not other than Mr. James.  
Q. Do you know where they come from?  
A. No, sir.  
Q. Do you know who hired them?  
A. No, sir.  
651 Q. You don't know if the T. P. & W. hired them?  
A. No, sir.  
Q. You don't know how they happened to get on the train that morning?  
A. No, I don't.  
Q. Did anybody from the T. P. & W. tell you the special agents would be on there that morning?  
A. Yes.  
Q. Who did?  
A. Chief special agent Kipling.  
Q. Were there some other special agents on the train other than those in the engine cab?  
A. Not that I know of.  
Q. What time did Kipling tell you you were going to have these special agents?  
A. He didn't say.  
Q. What time did he tell you about it?  
Mr. Heyl: He answered it.  
The Court: Do you remember what time he told you?  
A. No, I don't remember.  
Q. You don't recall whether it was that morning, or the day before?

A. I couldn't say.

Q. You described a piece of slag three inches in diameter. You don't know who threw that, do you?

A. No, I couldn't say positively; no.

Q. Did you know the two men that were there with Walter Kohtz?

A. No, I couldn't identify them positively.

Q. If you couldn't identify them, you don't know whether they were former employees, members of the T. P.

& W. employ, or not?

652 A. They looked like former employees.

Q. Which former employees did they look like?

A. They looked like Dilley and Evans.

Q. Dilley and Evans?

A. Yes.

Q. But you aren't sure about that?

A. No, sir.

Q. Were they standing behind Kohtz?

A. They were just about opposite each other.

Q. How far was Kohtz standing from the engine?

A. I couldn't say as to that.

Q. What is your best judgment?

A. Well, I would say possible a hundred and fifty feet.

Q. And he threw this piece of slag that weighed about three pounds a hundred and fifty feet and hit you?

A. Yes, I imagine.

Q. Now, you say that down at the M. & St. L. crossing you were heckled by Brewster and McMullen?

A. Yes.

Q. Did you see any of the members of your crew shaking their fists and thumbing their noses at these men?

A. No, I didn't.

Q. You didn't see that?

A. No, sir.

Q. In fact, even you yourself made some motions toward them, didn't you?

A. Not that I remember.

Q. Then when you went to the Allied Mills at Bartonville, there you say you were heckled again by Kneisley, Gimming, Brewster and McMullen, is that right?

A. Yes, sir.

Q. Did you see some of your men thumbing their noses and shaking their fists at them there?

A. No, sir.

Q. You didn't see that? You didn't see Gulick do that?

A. I was in the cab. Sure, I saw Gulick. I was right beside him.

Q. You didn't see him do that, though?

A. No.

Q. You didn't see McAvoy or O'Brien doing it, either?

A. No, sir.

Q. You say you went on about two thousand feet west, and you instructed the engineer or fireman—

A. Fireman.

Q. —to open the blow-off cock, is that right?

A. Yes, sir.

Q. What does that do?

A. It settles the water in the boiler to eliminate foaming.

Q. What occurs on the side of the engine?

A. Steam and water escaping from the blow-cock.

Q. Anybody standing there would be covered with water and steam?

A. No, sir, nobody on that side of the engine.

Q. It couldn't be possible men standing there would be burned?

A. No, sir.

Mr. Heyl: I object. He said it was impossible on that side of the engine.

The Court: He has answered.

Q. I thought you said that was the side the rocks come from?

A. No, sir, this was the left side of the locomotive.

654 Q. And you say that no one was hit with that steam and water, hot water, that was blown off?

A. There was nobody over there.

Q. You were over on the right side?

A. Not at the time. I instructed the fireman to blow off the blow-off cock.

Q. You had gotten over in the left side of the cab then?

A. Yes.

Q. Did you walk over there and instruct him?

A. Yes, sir.

Q. You didn't call over and tell him?

A. No, sir.

Q. If someone were struck with this hot steam and water, that would be painful to them, wouldn't it?

A. It all depends; not all the time.

Q. After that was done, that was about when the rocks started coming?

A. Just previous to the time the rocks started coming.

Q. The rocks started first?

A. No, just shortly after the blow cock was opened.

Q. Then the rocks started?

A. Yes.

Q. You say that you did not see anyone throw these bottles that you speak of?

A. No, sir.

Q. And you don't know what was in the bottles, do you?

A. No, just some inflammable liquid.

Q. That came from the right side of the engine?

A. Yes, sir.

655 Q. Now, when the—that blow-off cock was opened, letting off that steam and water, and the rocks were coming and the flames that you spoke of, you were in the cab during the entire time, is that right?

A. Most of the time, yes.

Q. Were you out of the cab at any time?

A. Yes.

Q. Where were you?

A. Trying to shut the blow-off cock from the left step of the locomotive.

Q. How long did it take you to do that?

A. Oh, possibly thirty seconds.

Q. And then you got back in the cab?

A. Yes.

Q. And you are sure that morning you heard no shooting coming out of the cab at all?

A. No, I didn't.

Q. Those special agents up there never fired their guns in any way?

A. No, they did not.

Q. What types of guns did they have?

A. I couldn't tell you that.

Q. Did you see them?

A. Not out of the holsters, no.

Q. How many did each one have?

A. I couldn't tell you that.

Q. You observed all four of those special agents all the

time, and at no time did any one of them take their guns from the holster?

A. Not that I noticed.

Q. If there had been any shooting by them from 656 the cab, you would have heard it?

A. I couldn't hear anything from the noise of the blow-off cock.

Q. There might have been some shooting, and you not know about it?

A. There might have been some shooting, but I couldn't have heard it.

Q. There is a blow-off cock on both sides of this engine, isn't that right?

A. Yes, sir.

Q. The engine you had that day?

A. Yes, sir.

Q. There is one on the right hand side?

A. Yes, sir.

Q. But that one, you say, was not opened?

A. It was not opened.

Q. Did you— After this occasion did you say you continued to operate the engine after these flames that you are speaking about?

A. Shortly after, yes.

Q. The train kept on going down the track, didn't it?

A. Yes, sir.

Q. And all eight of you remained in the cab?

A. Yes, sir.

Q. None of you left the cab? Up there, I mean.

A. No, sir.

Q. Not until you let the special agent off somewhere down along the line?

A. Yes, sir.

Q. Engineer Gulick completed the run with you that day?

A. Yes, sir.

Q. In fact, he drove the engine part of the way after this?

657 A. Yes, sir.

Q. And you were not able to identify anybody where these bottles were thrown from, or these rocks came?

A. No, sir.

Q. And after this occurred, did you report this to any law-enforcement officers or public officials?

A. I did not.

Q. Did you swear out warrants or attempt to secure any investigation of the matter?

A. No, sir.

Q. Did you ever work as an engineer any place, Mr. Funk?

A. No, sir.

Q. Who were you employed by? I asked you that question. Were you ever employed by any other railroad company before?

A. Yes, sir.

Q. Which one?

A. Burlington.

Q. What year?

A. From 1911 to 1916.

Q. And in what capacity?

A. Locomotive fireman and fuel supervisor.

Q. Is that the last railroad experience you had prior to going to work for the T. P. & W.?

A. Yes, sir.

Mr. Knoblock: That's all.

Mr. Elliott: I neglected one question I should have asked on direct.

658 *Further Direct Examination by Mr. Elliott.*

Q. When these bottles came in and broke, did you or not observe anything with reference to fumes from them?

A. Yes, there was an odor from this liquid.

Q. What was the nature of that odor?

A. Well, it resembled benzine.

Q. You are familiar with the smell of benzine, are you?

A. Yes.

Q. Did you have any benzine on that engine that day prior to the time these bottles were thrown in?

A. No, sir.

Q. Was there any gasoline on that engine prior?

A. No, sir.

Q. Who was running the engine at the time that these bottles came in?

A. Engineer Gulick.

Q. And you were where, with reference to him?



A. I just stepped over to the left side of the cab.

Mr. Elliott: I see. That is all.

The Court: Cross-examination?

659 Mr. Heyl: I am recalling Mr. Kipling for one question.

HAROLD E. KIPLING, recalled, having been previously sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Harold E. Kipling.

Q. You are the same Harold E. Kipling that testified this morning?

A. Yes, sir.

Q. Mr. Kipling, I believe you stated this morning you had charge of the employ of special agents,—

A. Yes, sir.

Q. —is that correct?

A. Yes, sir.

Q. Did you or not give any instructions to all of the special agents under you working for the T. P. & W. Railroad during this strike with reference to the use of firearms?

A. Yes.

Mr. Knoblock: I object to that.

The Court: I think he may answer.

Q. What instructions did you give them?

A. I said absolutely not to use their weapons unless they were attacked.

The Court: What did you tell them?

Q. What did you tell them?

A. I told them not to use their guns unless they  
660 were attacked by them being hurt and damaging our property, and being stoned, or anything that would hurt them.

Q. Personally?

A. Yes, personally.

Q. Is that what you mean?

A. They were out there to protect the employees.

Mr. Knoblock: There is nothing pending.

The Court: He answered the question.

Q. Did you instruct them to or not to use their guns in the defense of the property, or only their person?

A. Person.

Mr. Knoblock: I object to the leading form of the question.

The Court: He has answered.

Mr. Heyl: That's all.

The Court: Cross-examine.

*Cross-Examination by Mr. Knoblock.*

Q. Who gave these men their guns?

A. I did.

Q. Who bought the ammunition for them?

A. I did.

Q. Who instructed you to hire them?

A. The company.

Q. Whom do you mean by "the company"?

A. Mr. McNear.

Q. You got those orders from him direct?

A. Yes.

Q. And you got your orders direct from him to give these men guns?

661 A. No, sir.

Q. Where did you get these orders?

A. I gave them to them.

Q. That was your own idea, is that it?

A. Yes, sir.

Q. Did Mr. McNear know you were going to give these men guns?

A. He never told me not to.

Q. He never told you not to?

A. No.

Q. Has he ever reprimanded you for doing that?

Mr. Heyl: I object; improper.

The Court: Sustained.

Q. Has he ever complained later because you gave them to him?

Mr. Heyl: I object.

The Court: We are not trying Mr. McNear. It makes no difference whether McNear did or not. All this court is interested in is if they had guns, and what they were using them for, and if they themselves created any disturbance. I can't see where this has anything to do with

what the company or anybody told them to do. It is purely a question: what did he, as an agent of this company, tell these men?

For that reason, the objection will be sustained.

Mr. Knoblock: That's all.

The Court: Is that all?

662 OMAR C. GULICK, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Omar Charles Gulick.

Q. Where do you live, Mr. Gulick?

A. 117 Meadows Avenue, East Peoria.

Q. How—

Mr. Knoblock: I can't hear you. Meadows Avenue?

A. Meadows Avenue.

Q. How old are you?

A. Forty-nine.

Q. And how long have you lived in East Peoria?

A. I moved there thirteen years ago.

Q. What is your business?

A. At present? Engineer.

Q. What has been your business in the past?

A. Well, railroad man, construction man.

Q. And how long have you done railroad work?

A. 1919 to 1929.

Q. For the T. P. & W.?

A. Yes, sir.

Q. In what capacity?

A. Fireman and engineer.

Q. Now, on January 2, 1942, were you connected with 41 west? Extra west?

A. Yes, sir.

653 Q. And in what capacity?

A. Engineer.

Q. Now, will you tell the court just what happened from the time you left the yards in East Peoria until you got down to the American Milling plant?

A. We left the yard at 7:40, near that, and proceeded

to Peoria, down through the C. B. & Q. yard, still on C. B. & Q. track. How far do you want to go?

Q. What happened?

A. We had some rocks thrown at us near the back of the Star Brewing Company distributing plant.

Q. That is on what street?

A. I don't know the street.

Q. Down—

A. Down near 2800 or 2900 South Adams Street.

Q. South Washington Street?

A. South Washington.

Q. Did you recognize any of the men there that were throwing the rocks and stones and bricks, or whatever they were?

A. I think at that time I recognized one man.

Q. Who was that?

A. Bill Evans.

Q. And was formerly employed by this railroad?

A. He was.

Q. Were there any other fellows there?

A. There was several fellows there, but I didn't recognize any of them.

Q. Did you see anyone in your engine receive any of these objects?

A. Yes, sir.

664 Q. Who was that?

A. Mr. Funk.

Q. What happened?

A. He was hit in the chest or—by an object of some kind.

Q. What did it look like?

A. It looked like a burned cinder or core of some kind.

Q. What was the size of it?

A. Well, in the neighborhood of a baseball, or maybe a little bigger.

Q. Where was the train when he received that?

A. That was when we was at the Star Model Distributing Company.

Q. Was there any damage done to the engine?

A. Not at that particular point.

Q. Where was the damage done?

Mr. Knoblock: I object.

The Court: Yes. What happened next?

Q. What happened after that?

A. We proceeded on down to the M. & St. L. crossing.

Q. What happened there?

A. Nothing happened there.

Q. What happened on beyond that?

A. Nothing particular until we went out to the American Milling Company and set out ten cars on track 61.

Q. Then what did you do after that?

A. Coupled up the train, and proceeded on our way.

Q. After you had coupled and started west, how far had you proceeded until something else happened?

A. I suppose in the neighborhood of two thousand feet.

Q. Who was running the engine at that time?

665 A. I was.

Q. How fast were you traveling?

A. Not to exceed twenty miles an hour, anyhow; fifteen to twenty miles.

Q. How many cars did you have on the train, if you recall?

A. I don't know exactly. I suppose in the neighborhood of sixteen, seventeen cars.

Q. And you were on the right side of that engine, I take it?

A. Yes.

Q. Next to the hard road?

A. That's right.

Q. Were there any windows in the cab of the engine?

A. Were there any in the cab?

Q. Yes, sir.

A. Yes.

Q. How about the windshield? Was there a windshield?

A. It was broken.

Q. At that time?

A. Yes, sir.

Q. When was it broken? That is what I am trying to find out.

A. We was running when an object hit the windows and broke them.

Q. After you left the American Milling plant and started west, did you observe anyone on the highway?

A. Not for several feet. When we was setting out the cars we did.

Q. Whom did you observe?

A. I didn't know any of them there.

Q. After you hooked up and started west, did you notice anybody down the road?

A. Not for quite a ways.

666. Q. When you got down there?

A. When we was attacked.

Q. What did you observe?

A. There was a lot of stones or bricks and stuff thrown against the engine.

Q. Did you look over to the road then?

A. Oh, yes.

Q. What did you see there?

A. I seen a bunch of men.

Q. How many?

A. I didn't have time to count, but I imagine twenty-five to thirty men.

Q. Did you recognize anyone there that threw anything?

A. No, I didn't.

Q. Did you recognize anyone along the road there?

A. Not that I knew, no.

Q. Now, did anything come into the engine?

A. Yes.

Q. What?

A. There was rocks and bricks, and a bottle thrown with some inflammable liquid.

Q. How did that get in the engine?

A. Come in through the window.

Q. Was there glass in the window?

A. No, the window was open.

Q. What happened?

A. The bottle of liquid, inflammable liquid, hit me on the chest and glanced over against the boiler and ignited.

Q. Then what happened?

667. A. There was quite a fire for a while, and there was another bottle thrown and it also broke.

Q. Did it ignite, too?

A. It must have.

Mr. Knoblock: I object.

The Court: Yes. If he knows,—

Q. Do you know whether it did or not?

A. Well, it certainly did.

Q. What happened after this bottle was broken? What happened to the men inside?

A. To the men inside?



Q. Yes.

A. I immediately caught in flames. I stopped the train as quick as I could to keep from fanning the flames.

Q. What about your own person?

A. I was a-fire all over, as far as that's concerned.

Q. Did it have any effect on you?

A. It burned my eyes and ears there—and difficulty in breathing for quite a little bit until I got it out.

Q. Do you know Guy Lucas?

A. Guy Lucas? I did years ago.

Q. Sometimes known as Frank Lucas?

A. I don't know whether his name is Frank Lucas or not.

Q. Formerly an employee of the railroad, wasn't he?

A. He was a fireman when I was there.

Q. I will ask you if you observed Guy Lucas along that railroad that morning.

A. No.

Mr. Knoblock: I object as having been asked and 668 answered.

The Court: He said he didn't.

Q. What kind of bottles were these two bottles that came into the engine?

A. Well, part of the label on one—the bottle was the style of a gin bottle.

Q. What about the other one?

A. It would be pretty hard to say what that was, I didn't see no label.

Q. What size bottles were they?

A. They was either half pint or pint.

Q. Was there any other—anyone injured while on that locomotive any time that morning?

A. Yes, the man right directly behind me; his hand was injured.

Q. Did you see him?

A. I seen him, yes.

Q. What was the nature of his injury?

A. When I saw it, his hand was bloody, and I couldn't tell much about how bad he was hurt.

Q. Do you know, from what you observed, as to how this happened? This injury?

A. Well, yes.

Q. How did it happen?

A. He had his hand behind me and hold of the arm rest on the engine.

Mr. Knoblock: I object, and move it be stricken.

The Court: What is the objection?

Mr. Knoblock: That he must have had.

A. He did have.

The Court: Is that correct? Did you see that?

669 A. I knew the man was directly behind me, and had his arm behind me.

The Court: Do you know where his arm was?

A. Yes.

The Court: So that what you have stated is true?

A. That's right.

The Court: Go ahead!

Q. Now, after you left— Was there anyone in the engine that you know of that used any firearms?

A. No, sir.

Q. Were there any of the special agents that you observed shooting?

A. No, sir.

Q. Did you hear any noise of any shooting?

A. No, I couldn't distinguish the noise of shooting, I suppose, on account of the rattle in the cab of the rocks.

Q. Did you see anyone displaying any firearms, or using any firearms?

A. No, sir.

Q. Or having them in their hands while they were in the cab?

A. No, sir, I did not.

Q. After that happened, you started on west? Did anything happen as you reached Wheeler's crossing?

A. No, sir.

Q. Or as you approached Mapleton?

A. No, sir.

Q. Did anything further happen to you that day?

A. It did not.

Q. Where did you leave this man that was injured?

A. Just west of Mapleton, the first crossing.

Q. Now, who ran the engine after these bottles had exploded in the cab?

670 A. Mr. Funk ran the engine the biggest part of the day, the trip.

Q. Were you able to run it?

A. I was possibly able, but my eye was hurt pretty bad, watering, and I didn't take any chance on it.

Q. This occurred on January 2, 1941, is that correct?

A. Yes, 1942.

Q. Now, on December 30, 1941, were you on duty?

Mr. Knoblock: I didn't get that question.

(Question read by reporter.)

A. Yes, sir.

Q. On extra 41 west?

A. Yes, sir.

Q. What time did you leave Peoria?

A. Went to work at 10 o'clock, left Peoria about 11, I think, 11:30.

Q. Left the yard about 10?

A. I don't remember just the time.

Q. Did anything happen after you left Peoria that morning?

A. Nothing unusual until we got over on the west end.

Q. Then what happened?

A. This side, east of Sciota, there was rocks thrown against the left side of the engine. I didn't see none, but I heard them.

Q. Any damage to the engine?

A. Not any.

Q. Now, at Ferris, Illinois, what happened?

A. There was more rocks thrown on the left side.

Q. Where?

A. Left side of the engine.

Q. What about Taber's crossing at Hamilton?

A. There were several there.

671 Mr. Knoblock: What?

A. There were several there.

Q. You returned December 31, 1941, did you?

A. Yes, sir.

Q. Did anything happen after you got back to Peoria?

A. Not unusual until we got off of the Franklin Street bridge.

Q. What happened on West Washington Street crossing?

A. Rocks thrown at the right side of the engine there.

Q. A little louder, please.

A. Rocks thrown at the right side of the engine there.

Q. That occurred at about what time?

A. Soon after dark. I don't know just what time we cleared that night.

Q. Did you recognize the men who threw the rocks?

A. I did not.

Q. Was there more than one man there?

A. Yes, there was three that I saw.

Q. How many stones were thrown?

A. Well, I wouldn't say more than half a dozen.

Q. Was the throwing of the stones in all the incidents that you have mentioned of the same character; That is, thrown at the engine?

A. They seemed to be, yes.

Q. Did you see any of these men carrying anything in their hands at any time?

A. No, I didn't. It was dark.

Q. Do you know where they got the stones?

A. I wouldn't have no idea.

Mr. Heyl: All right. That's all.

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*Cross-Examination by Mr. Knoblock.*

Q. When did you first go to work for the T. P. & W., Mr. Gulick?

A. 1919; soon after I came out of the service.

Q. When?

A. After I came out of the army in 1919.

Q. Had you had any railroad experience prior to that?

A. No.

Q. What was the nature of your work from 1919 to '29?

A. Fireman and engine man, engineer.

Q. When did you start running an engine?

A. Spring of '27.

Q. Now, on January 2, 1942, you were an engineer on what is known as 41 extra west, is that right?

A. Yes, sir.

Q. And you left the yards at about 7:40 A. M.?

A. Yes, sir.

Q. There was nothing unusual, you say, until you reached the Star Model Brewery—

A. That's right.

Q. —or storehouse or something, in the 2900 block South Washington Street?

A. It's near that.

Q. You saw Bill Evans there, is that right?

A. Yes, sir.

Q. Did you see anybody else there?

A. Yes, there was other men, but I didn't know them.

Q. How long have you known Bill Evans?

- A. Since possibly 1920.  
Q. What was Bill Evans doing there?  
673 A. I couldn't tell you. I don't know.  
Q. Doing anything other than standing there?  
A. As far as I know,—  
Q. He was standing there?  
A. He was there, yes.  
Q. You didn't see anybody throw the object that hit Mr. Funk in the chest, did you?  
A. I couldn't say I saw him directly, no.  
Q. How far was Bill Evans from the engineer at that time? About a hundred and fifty feet?  
A. Possibly not that far.  
Q. About how far would you say?  
A. I would say in the neighborhood of a hundred feet.  
Q. What?  
A. From seventy-five to a hundred feet.  
Q. And there wasn't anything that happened down at the M. & St. L. crossing, you say?  
A. Not that I seen.  
Q. When you got over to the Allied Mills, or a place opposite the Allied Mills, did you see Special Agent Kipling along the road in his car?  
A. No, I didn't.  
Q. How many special agents did you have in the cab of your engine that day?  
A. Four.  
Q. Did they carry guns?  
A. I don't know.  
Q. As far as you know, they didn't?  
A. That is right.  
674 Q. Did they have holsters on them?  
A. I don't know that.  
Q. Didn't you see them carry them on their hips in the holster?  
A. I have other duties.  
Q. I understand that, but didn't you see one of the special agents get out of the cab of your engine, and walk out there on the ground?  
A. When we was setting those cars out, there was, but I didn't know him.  
Q. You saw him?  
Mr. Heyl: Where are you asking about?  
Mr. Knoblock: Allied Mills.  
A. When we set out cars at Allied Mills, there was.

Q. And he walked down from the cab, and walked along the ground?

A. Along the edge of the train.

Q. Did you see him pull his coat back, and put his hand on his gun butt?

A. I did not.

Q. As you went south about two thousand feet, Mr. Funk instructed the fireman to let the blow-off cock out, didn't he?

A. Yes, as far as I know he did.

Q. And they went off on both sides of the train?

A. What's that?

Q. They were let out on both sides of the train, weren't they?

A. No, sir.

Q. This engine had them on both sides?

A. Yes, sir.

Q. Wasn't the steam let off the right side and left side both?

A. No, sir.

675- Q. Which side was it let off?

A. Left side.

Q. When you let the blow-off cock out, that lets the steam and hot water out?

A. Yes, sir.

Q. And anyone sprayed with that could be pretty badly burned?

A. I presume they could.

Q. That is pretty hot when it comes out of there—doesn't it? Isn't it?

A. Pretty much pressure, yes, boiler pressure.

Q. How many cars did you have on that train?

A. Well, after we had set out at the Allied Mills?

Q. Yes.

A. I presume sixteen or seventeen cars. I don't know exactly.

Q. Do you know about the special agents along the rest of the train?

A. None but the four that was on the engine.

Q. When you got over to Hamilton, you saw the rest of the special agents? You knew they were on your train?

A. I presumed there was.

Q. All together there was eight?

A. I don't know.

Q. About that?



A. I don't know; four on the engine.

Q. You saw some when you got to Hamilton?

A. The same ones was in there. I believe we changed at Canton.

Q. I see. Did you see any of these special agents shooting there when you let the steam off?

A. I didn't let the steam off.

Q. When the fireman let it off.

676 A. No, sir.

Q. You never saw a special agent use a gun at all at that time?

A. I did not.

Q. You didn't even hear them?

A. No, sir.

Q. It was a short time after the steam was let off the rocks started to come, isn't that right?

A. I never paid no attention to that, but about the same time, I imagine.

Q. After the rocks started coming, then these bottles came in, is that right?

A. Yes.

Q. And all that time the steam was being turned on? Let off?

A. I presume it was.

Q. You don't know— You didn't see anybody out there along that road two thousand feet south of the Allied Mills?

A. When we reached the Allied Mills?

Q. Yes.

A. No.

Q. You couldn't identify anybody?

A. Not as we went along.

Q. You never saw anybody there?

A. Along the highway when they throwed that?

Q. Yes.

A. Yes.

Q. You saw the man who did it?

A. Yes.

Q. You didn't recognize him?

A. I could recognize him.

677 Q. You could? Who is it?

A. I don't know his name, but I could identify him if he was dressed in the garb, or near that.

Q. What kind of a looking man was he?

A. He was a big nian.

Q. Did you see anybody else with him?

A. There was several there I didn't know. I didn't have much time.

Q. Didn't I understand you to say on direct examination you never saw that bottle until it hit the inside?

A. I never said that.

Q. When did you first see the bottle?

A. When it was thrown.

Q. How far from the tracks was this man standing?

A. On the edge of the bank, between the highway and the tracks.

Q. How far would you say that was?

A. It wasn't very far. I wouldn't say over thirty, thirty-five feet.

Q. There was none of you left the cab after this attack?

A. No, sir.

Q. All of you remained in there?

A. Yes, sir.

Q. You slowed the train down for a little ways, and started up again?

A. I stopped the train.

Q. Where did you stop it?

A. As soon as I could after the fire started.

Q. Did any of these men along the highway come down?

A. I was putting the fire out on myself.

Q. Did anybody show up but your engine crew?

A. Not that I saw.

678 Q. How far down the track did you get the train stopped?

A. Not very far. I stopped her immediately.

Q. How far?

A. That would be pretty hard to estimate how many feet; a very few feet.

Q. Close to a mile? A tenth of a mile? Quarter of a mile?

A. I wouldn't say over six car lengths, or eight.

Q. A car is about forty feet in length, is that right?

A. That's right.

Q. On this date of January 2, 1941—1942—besides Funk, who else was in the cab there as a member of the train crew?

A. A fireman and a student fireman.

Q. What were their names?

A. McAvoy was the name of one of them. O'Brien was the other.

Q. Then on December 30, 1941, you took extra 41 west, is that right?

A. Yes, sir.

Q. That was two days before you made this run on January 2, is that right?

A. Third day.

Q. Did you have any special agents on that train?

A. Yes.

Q. How many did you have on there then?

A. There was one on the engine.

Q. Was there another one on the back end?

A. I don't know.

Q. Was that man there with you on the engine at that time armed?

A. I don't know.

Q. You didn't see him have any gun?

A. No, sir.

679 Q. How did you know he was a special agent?

A. I was told he was.

Q. Who told you?

A. By himself.

Q. Who told you these four men were special agents on January 2?

A. Just taken for granted, I guess, they were.

Q. No one told you that?

A. Well, I can't say that they did.

Q. You didn't see them have any guns on them?

A. No, sir.

Q. Then on December 30 you say you left Peoria about  
11 A. M.?

A. That's right.

Q. And nothing happened until you reached Sciota?

A. East of Sciota.

Q. When did you reach Sciota?

A. About 6:30, as near as I remember.

Q. It was dark?

A. It was.

Q. When you say 6:30, you mean P. M. in the evening?

A. Yes, sir.

Q. You didn't see anybody throw rocks on that occasion?

A. No.

Q. You have no idea?

A. No, sir.

Q. When you got to Ferris you didn't see anybody throwing rocks there?

A. No, sir, that was on the left side of the engine.

Q. What?

A. They were on the left side of the engine.

680 Q. You don't know who did throw them?

A. No, sir.

Q. At Taber crossing you didn't see anybody throw anything there?

A. No.

Q. And you don't know who did?

A. No, sir.

Q. Have you ever driven an engine and had people throw rocks at you other than on these occasions?

A. Never did.

Q. You never did?

A. No, sir.

Q. On December 31, that was on your trip back from Hamilton, Illinois?

A. That's right.

Q. When you got on the other side of the Franklin Street bridge, that is just across in Tazewell County, you mean?

A. Yes.

Q. It was dark then, too, wasn't it?

A. Yes, sir.

Q. You say you saw three men there?

A. I got a glimpse of three men, yes.

Q. Do you know who they were?

A. I couldn't.

Q. Could you identify them?

A. No, sir.

Q. You say you saw them throwing?

A. I saw them throwing, yes.

Q. Did the rest of the men in the cab see it?

A. I don't think so. Not to my knowledge they  
681 didn't. They were on the other side of the engine.

Mr. Knoblock: That's all.

The Court: Is that all?

*Redirect Examination by Mr. Heyl.*

Q. You, Mr. Gulick, believe that you can identify the man that you saw throwing?

A. I am satisfied I can.

Q. Will you go down here and see if you can pick him out in the court room?

The Court: I think you can do that.

A. I can see him from right here.

Q. Which man is he?

A. Second row back, and the third man in.

Mr. Heyl: Will the gentleman stand up?

(Person named rises.)

Q. Is that Mr. Frank W. Lucas? Is that the man?

A. I don't know his name, but that is the man.

Q. The man that threw the bottle?

A. Yes.

Mr. Heyl: That's all.

The Court: Anything further?

*Recross Examination by Mr. Knoblock.*

Q. Mr. Gulick, on direct examination did I hear you say that, as you passed that point two thousand feet south of the American Milling Company, that you could not identify anyone there? Isn't that what you said?

682. A. I don't mean that statement that way. I didn't identify anybody when we was setting out those cars.

Q. But when you were two thousand feet south of the Allied Mills, didn't you say on direct examination you couldn't identify anyone as you passed there?

A. When the man was thirty feet from there?

The Court: Did you say that or not?

A. No, I didn't say that.

Q. Were there some rocks thrown before the bottle came in?

A. There was.

Q. You are sure of that?

A. Yes, sir.

Q. How many rocks were thrown before the bottle came in?

A. I couldn't say; several.

Q. How long had rocks been thrown before the bottle came in?

A. Not very long; it all happened immediately.

Q. Did you see who threw the rocks?

A. Well, I couldn't—I seen men throwing rocks, but I couldn't identify them.

Q. You couldn't recognize them?

A. No, I couldn't. I didn't have much time to look.

Mr. Knoblock: I think that is all.

The Court: Is that all?

Mr. Heyl: That's all.

The Court: We will be at recess for a few moments.

(Recess.)

683 EARL RILEY, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl:*

Q. What is your name?

A. Earl Riley.

Q. Where do you live?

A. Washington, Illinois.

Q. What is your age, and what is your business?

A. Restaurant proprietor.

Q. How old are you?

A. Thirty-six.

Q. How long have you lived in Washington?

A. All my life.

Q. Born there, were you?

A. Yes, sir.

Q. What is the name of your restaurant?

A. Mickey's Restaurant.

Q. Where is Mickey's Restaurant?

A. On Peoria Street.

Q. Where, with reference to the square? The public square?

A. It's on the west side.

Q. Were you in your restaurant last Thursday evening?

A. I was.

Q. That was January 8, 1942?

A. Yes, sir.

Q. I will ask you if a gentleman came there to the restaurant?

A. He did.

684 Q. Do you see him in the court room?

A. Yes.



Q. Will you come down here and point him out, please? Point him out, which one it is.

A. (Witness complies.) This man right here (pointing).

Q. You point to the second man in the second row, is that right?

A. Yes.

Mr. Heyl: Will you stand up and give us your name?

Mr. Kneisley: Kneisley.

Q. George C. Kneisley?

Mr. Kneisley: Yes, sir.

Q. Did you have a conversation with that man that evening?

A. Yes, I did.

Q. And was there anyone present there in the room?

A. My wife.

Q. And are either you or your wife interested in any way in the T. P. & W. Railroad?

A. I am not.

Q. Were you subpoenaed to come here this afternoon?

A. I was.

Q. Will you tell the court what this man said to you at that time? Just tell the whole conversation, just what he said.

A. He come in, sat there for a while, and finally asked me if I knew where Harry Kipling lived, and I said I didn't.

Q. What is Harry Kipling?

A. He used to be a plumber in Washington.

Q. What is he doing now?

A. As far as I know now, he is working at the round-house at the T. P. & W.

685 Q. That is not the special agent?

A. No.

Q. Go ahead.

A. He asked me if he still run a store, and I said I didn't know, which I really didn't know, whether he did run a store. He asked me where Weaver—

Q. Widmer?

A. Widmer boys—and he asked me about some other fellow, which I don't know. He just lived there a short time.

Q. Do you know the Widmer boys?

A. No.

Q. Do you know Mr. Waughop?

A. Homer Waughop?

Q. Yes.

A. Know him personally.

Q. What did he say about Waughop, or ask about it?

A. He said Homer Waughop worked there two days and went home, was supposed to be sick.

Q. What else did he say?

A. He said he didn't think a man in business would go and work on a strike.

Mr. Knoblock: A man in business what?

Mr. Heyl: Would go and work on a strike.

A. I said I didn't even know if he was working there at the time, which I didn't.

Q. What else did he say?

A. He said, "After it is all over with, Homer Waughop will pay for this."

Q. And did he say what would happen to them?

686 A. They would demolish the place.

Q. They would what?

A. Demolish the place.

Q. His place?

A. Yes.

Q. What else did he say about this railroad?

A. I asked him about the section gang going down in front of the train.

Q. What else?

A. He said they didn't interfere. He said if they wanted them to stop, they could stop them by stretching wire across the track.

Q. What did he say the wire would do?

A. Cut their heads off.

Q. Did he say anything in connection with that? Did he make any further statement in connection with that?

A. No.

Q. What else did he say?

A. I said something, could he wreck a gang—with the section gang in front of a train. He said, "Yes, we work in between them."

Q. What else was said?

A. That's all I said to him.

Q. How did he get over there? Do you know?

A. In a car.

Q. Did you see him come or go?

A. In a car.

Q. Car? Drive away, did he?

A. Yes.

Q. You didn't see him come up, though, did you?

A. No.

687 Q. You saw him leave?

A. Yes.

Q. Was there anyone with him?

A. Not that I know of.

Q. How long was he in your place?

A. Oh, I wouldn't say over fifteen or twenty minutes.

Q. Was he a stranger to you at that time?

A. I didn't know the man.

Mr. Heyl: That's all. Cross examine.

*Cross-Examination by Mr. Knoblock.*

Q. Mr. Riley, how long have you lived at Washington, Illinois?

A. All my life.

Q. How long have you been running this restaurant?

A. I have been in business since 1928.

Q. And whom do you know that is connected with the T. P. & W.?

A. That's working there?

Q. Yes.

A. I just knew Harry Kipling at that time.

Q. How long have you known Harry Kipling?

A. I have known him for ten or twelve years.

Q. And after you had this conversation with Kneisley, did you tell Kipling about it?

A. I never told Kipling, no.

Q. Whom did you tell about it?

A. George Mahle.

Q. Who?

A. George Mahle.

688 Q. How do you spell that last name?

Mr. Heyl: M-a-h-l-e.

Q. Let him spell it. Is that it? M-a-h-l-e?

A. I think it is.

Q. Is that the only man you told it to?

A. That is the only man.

Q. When did you tell him about this?

A. Last night.

Q. Is George Mahle connected with the T. P. & W. in any way?

A. Yes, he is.

Q. In what way is he connected with the T. P. & W.?

- A. To my knowledge, I think he works on pumps.
- Q. In the yards?
- A. All along the line.
- Q. You mean pumps on the engines?
- A. No.
- Q. What kind of pumps?
- A. Pumping water.
- Q. And you say Kneisley came in there all by himself?
- A. Yes, sir.
- Q. And what time of the evening was he there?
- A. I would say between 9 and 10 o'clock.
- Q. Was there anybody else in your restaurant outside of you and your wife?
- A. No, there wasn't; just the three of us.
- Q. He just wanted to know where Homer Waughop lived, is that it?
- A. He didn't ask about Homer Waughop. He asked for Harry Kipling.
- Q. Oh, he asked where Harry Kipling lived? Were you able to tell him that?
- 689 A. No, because I didn't know.
- Q. He just asked about the Widmer boys, and you didn't know them?
- A. I don't know them at all.
- Q. Nothing was said about them?
- A. No.
- Q. And he then asked about Homer Waughop?
- A. Yes.
- Q. And he said he didn't think a man— Is Waughop the man that was in business?
- A. Yes.
- Q. What business is he in?
- A. In the Casino Gardens, selling liquor, and runs bowling alleys.
- Q. Where is the Casino Gardens located?
- A. Out east of town about a mile and a quarter.
- Q. He said he didn't think a man in business would work in a strike, is that it?
- A. Yes, sir.
- Q. This conversation that you had with him about the section gang and the train, that was all just supposition, isn't that right?
- A. It was all brought up by myself, yes.
- Q. It was all brought up by you?
- A. Yes.

Q. And you were just wondering what could happen, is that right?

A. Yes.

Q. But Kneisley didn't say anything like that would happen, did he?

A. No, he didn't.

Mr. Knoblock: That's all.

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*Redirect Examination by Mr. Heyl.*

Q. I want to ask you one more question: What, if anything, was said by Mr. Kneisley or by you with reference to the injunction?

Mr. Knoblock: I didn't get that.

The Court: What, if anything, was said by Kneisley or by you with reference to the injunction?

Mr. Knoblock: I object as not proper redirect.

The Court: I think he may answer if anything was said.

A. He said if this was taken off, they could do something, otherwise they couldn't.

Mr. Heyl: That's all.

The Court: Just one question:

Did this man buy anything at all, or come in to talk?

A. He had a sandwich, pie and coffee.

The Court: He ate, and then the conversation ensued?

A. Yes.

The Court: You never saw him before?

A. No.

*Recross Examination by Mr. Knoblock.*

Q. With reference to doing something, they may have been putting more men on the picket line?

Mr. Heyl: I object to that.

The Court: Oh, yes, sustained.

Q. When they said they could do something, he didn't say what it meant?

691 Mr. Heyl: I object.

The Court: Was that the only conversation? What you have related, is that all that was said about the injunction?

A. Yes.

Q. Did you know George Kneisley lived in Washington?

A. No, I didn't.

Mr. Knoblock: That's all.

692 CATHERINE RILEY, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name, please?

A. Catherine Riley.

Q. Where do you live?

A. In Washington.

Q. Are you the wife of the gentleman who just testified?

A. Yes.

Q. And I will ask you if you were in your husband's restaurant last Thursday, January 8, 1942, when a strange man came in?

A. Yes.

Q. Did you hear the conversation between your husband and this man?

A. I did.

Q. Do you see that man in the court room?

A. Yes.

Q. Where is he? Tell where he is seated.

A. He's in the second row, and the second man from the aisle.

Q. Is this the man you referred to (indicating)?

A. Yes.

Q. Is that the man?

A. Yes.

Q. Will you tell the court just what you heard this man say to your husband, and what your husband said?

A. Well, he asked where Mr. Kipling lived, and Mr. Riley told him he didn't know.

The Court: Speak up.

693 A. He asked where Mr. Kipling lived, and Mr. Riley told him he didn't know.

Q. All right.

A. And he wanted to know if he run a gas store in town, and my husband told him he didn't know that, either, and he told about going up to see Homer and Homer had been sick, Homer Waughop, and that the men were scabbing on the railroad.

The Court: Who had gone up to see Homer?

A. He himself.



Q. Go ahead.

A. And my husband asked him how the strike was coming along, and he told him they weren't getting anywhere, and that he was out here trying to find—see these men, and Earl asked him— He said, "What about our section men going ahead of the train?" He said, "Why do you allow that?" He said they could soon settle them by stretching wires across if they wanted to take care of them.

Q. What else was said?

A. Well, there was just general talk about the railroad situation.

Q. What, if anything, did he say with reference to what would happen to Waughop's property? Did you hear that?

A. It would be demolished.

Q. By whom?

A. He didn't say.

Q. What did he say about it?

A. That the strikers would take care of that.

Q. Was that the Waughop that was temporarily working for the railroad?

A. Yes.

694 Q. And runs a tavern near Washington?

A. Yes.

Q. Is that right?

A. Uh-huh.

Q. Were there any other T. P. & W. employees that he inquired about?

A. Well, about the two Widmers boys?

Q. What did he say about these two boys?

A. He understood they had stayed at the City Hall all night one night the week before while the strike was going on because they were scared to go home.

Q. Is that what he said? Kneisley said to you?

A. Yes.

Q. Now, what did he say with reference to the injunction?

A. Well, he said their hands were tied, they couldn't do anything as long as the injunction was on.

Q. What did he say would happen if they got it loose?

A. If they were loose, then they could go ahead and do whatever they pleased.

Q. Is that what he said?

A. Yes.

Mr. Heyl: That's all.

*Cross-Examination by Mr. Knoblock.*

Q. Mrs. Riley, what time were you sitting in the court room here today?

A. I wasn't sitting here.

Q. Weren't you in the court room this morning?

A. No.

Q. Weren't you in the court room part of this afternoon?

695 A. No.

Q. What time did you come here today?

A. I came here between 3 and 3:30.

Q. This afternoon?

A. Yes.

Q. And you are sure you were not sitting in this court room this morning?

A. I was not.

Q. Did you know George Kneisley lived in Washington?

A. No.

Q. You have never known the man over there?

A. I have only seen him once before as I know of.

Q. Where did you see him?

A. In the restaurant.

Q. In the restaurant?

A. Yes.

Q. He had come in to your restaurant on another occasion, is that right?

A. Not as I know of; only once before. I served him.

Q. How well does your husband know Homer Waughop?

A. He's a very personal friend of him.

Q. Homer Waughop is the man that runs this Casino east of town, is that right?

A. Yes.

Q. And now, when Mr. Kneisley and your husband were talking together, your husband asked Mr. Kneisley, did he not, how they could do anything to a train with the section crew running in front of it? He asked about it?

A. Yes.

696 Q. Mr. Kneisley didn't say they were going to do that?

A. He said when the time came they would handle the situation.

Q. Your husband heard the same thing as you did?

A. Yes.

Q. Due to your friendship with Homer Waughop, you folks were quite concerned, weren't you?

A. We were.

Q. You immediately told Mr. Waughop, I assume?

A. Mr. Riley notified the proper authorities.

Q. Did you tell Mr. Waughop?

A. I don't know if he told Mr. Waughop personally or not.

Q. Were you present when your husband notified the proper authorities?

A. I heard him.

Q. Whom did he call?

A. Our night watchman.

Q. In Washington?

A. Yes.

Q. Did your husband notify anybody else?

A. Not as I know of.

Q. He did notify Mr. Waughop?

A. Not as I know of.

Mr. Heyl: She didn't say that.

Mr. Knoblock: I am just asking her.

Mr. Heyl: You said she said she said it.

Q. Did your husband notify Mr. Waughop?

Mr. Heyl: Objected to as answered.

The Court: She answered.

6977 A. Not as I know of, he did not.

Q. How frequently does Mr. Waughop come to your restaurant?

A. Mr. Waughop comes to the restaurant every time that he gets a chance to, to chat.

Q. Do you people go to his tavern and casino?

A. We have been frequently.

Q. How many years have you been associated in that manner?

A. I have known him ever since I have lived in Washington; eight years.

Q. Your friendship with Mr. Waughop is very close and sincere, is that right?

A. It is.

Q. When did your husband notify the night watchman?

A. When the night watchman came into the restaurant.

Q. That was on January 9?

A. It was on Thursday evening.

Q. On that same Thursday evening?

A. Yes.

Q. Then your husband did talk to someone prior to last night about this, is that right?

A. He did. It was prior to last Thursday night,—not prior.

Q. What was that last?

A. It wasn't prior to last Thursday night, and last Thursday night he talked to the night watchman, and told it to several of the railroad authorities since that time, but not last night.

Q. You say your husband talked to somebody about this prior to last Thursday night?

A. No, he did not.

Q. But he did talk to several railroad authorities 698 prior to last night?

A. Yes, he did.

Q. Do you know whom he talked to?

A. I am not certain who he talked to.

Q. Give us your best judgment.

Mr. Heyl: I object.

The Court: Did you hear him talking to somebody?

A. I heard him talking to one of the men last night.

The Court: Who was that?

A. I believe George Mahle, one of the old railroad employees.

Q. Prior to last night, whom did your husband talk to about this?

Mr. Heyl: If you were present.

Mr. Knoblock: That's all.

*Redirect Examination by Mr. Heyl.*

Q. Were you subpoenaed to come here as a witness?

A. Yes.

Q. Were your witness fees paid and tendered to you?

A. Yes.

Mr. Heyl: That is all.

699 LLOYD E. McAVOY, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Elliott.*

Q. You may state your name.

A. Lloyd McAvoy.

Q. Where do you live, Mr. McAvoy?

A. 110 Sheen Avenue, East Peoria.

Q. How old are you?

A. Forty years old.

Q. What is your business?

A. I'm a fireman on the road.

Q. For what road?

A. T. P. & W.

Q. Were you on duty on January 2, 1942?

A. Yes, sir.

Q. What time did you go on duty that day?

A. I went on duty, if I remember right, at 6 o'clock that morning.

Q. Were you a fireman on a train leaving Peoria that day?

A. Yes, sir.

Q. Do you remember the number of the train?

A. Extra 41—

Q. West?

A. —west.

Q. Running from Peoria to what point?

A. To Hamilton.

Q. Who was your conductor?

A. A man by the name of Sweet.

700 Q. And who was in the engine with you?

A. I beg your pardon! It wasn't Sweet that was conductor. It was Taylor, Dick Taylor.

Q. Who was the engineer?

A. Omar Gulick.

Q. Do you know a man by the name of E. R. Funk?

A. Yes, sir.

Q. Was he on the engine also?

A. Yes.

Q. Did you have an apprentice fireman?

A. Yes, sir.

Q. What was his name?

A. Jimmy O'Brien.

Q. What time did you leave the yards in East Peoria?

A. About 7:20, I think, possibly.

Q. And about how many cars did you have as you left the yards?

A. Well, I wouldn't know how many cars we had.

Q. Was there anything that occurred out of the ordinary as you left the yards until you got into Peoria?

A. Not a thing.

Q. When was the first place anything out of the ordinary occurred as you proceeded westward?

A. The first thing was down by the Star Model Brewery in the yards.

Q. About what speed was your train moving at that time?

A. I should judge about fifteen miles an hour.

Q. Who was running the engine at that particular time?

A. Mr. Funk was running the engine at that particular time.

Q. Where was Engineer Gulick?

A. He was standing behind Mr. Funk, I think.

701 Q. Where were you?

A. I was down on the deck taking care of my engine.

Q. That is the deck between the engine proper and the tender?

A. Yes, that is right.

Q. In the position you could fire the engine?

A. That's right.

Q. As you were proceeding along near the Star Model Brewery, what, if anything, occurred?

A. Somebody threw a slug of molding sand at Mr. Funk, which hit him on the chest and glanced off and fell on the desk of the engine.

Q. What effect did that have upon Funk?

A. It kind of dazed him, knocked his wind out a little bit.

Q. Did you see the party that threw that?

A. I did not.

Q. Did you see the thing that was thrown in after it landed on the engine?

A. I did, yes.



Q. Describe it as near as you can.

A. I would say it was about, possibly, four inches long, and I imagine it's about eight inches 'round, just a core from a cylinder, from a poured cylinder.

Q. What, if anything, happened to the engine or the windshield of the engine at that time?

A. I don't remember of anything happening right there.

Q. Did the train proceed on from that point?

A. Yes, sir.

Q. Where did you stop next? You didn't stop at this point, did you?

702 A. No, sir, not as I remember. The next stop we made was down at the M. & St. L. crossing, I think they call it.

Q. What did you notice there, if anything?

A. I saw some fellows out on the road there, but I didn't recognize any of them. In fact, I didn't know any of them.

Q. Were there any automobiles there?

A. Of course, there was some cars around there, but I didn't pay no attention to them.

Q. What did you see these people do that you saw out on the road?

A. I can't say they was doing anything, only going up and down talking.

Q. Did you proceed on from there?

A. Yes, sir.

Q. Where did you stop after that?

A. Well, we went on down there about two thousand feet from the American Milling Company, and that is where they threw their stones and their bottles.

Q. Tell what occurred about two thousand feet below the Milling Company.

A. Mr. Gulick was running the engine at that particular time, and Mr. Funk was over showing this Mr. O'Brien how to pull that pop-off valve on the engine, and all at once it sounded like a bunch of machine guns or something broke loose, and glass began to fly.

Q. Where from?

A. From the glasses of these cabs, and rocks began to come in to who laid the chunk.

Mr. Knoblock: I object.

The Court: What is the objection?

Mr. Knoblock: "To who laid the chunk."

703 The Court: That is a farmer expression!

Mr. Knoblock: I don't think it is proper.

I am serious about that.

The Court: I don't think it hurts or helps you.

Q. Go on!

A. There were two bottles of some kind of fluid that exploded mighty quick that came in the cab. One hit Mr. Gulick on the breast as it came in. It glanced off and hit on the engine and bursted and ran down in front of the fire box, and came right up with a blaze of fire. When this bottle broke on this side of the engine boiler here, it also sprayed Mr. Gulick with the liquid.

Q. What occurred then?

A. And then when it got set off from the fire box, I presume,—

Mr. Knoblock: I object.

The Court: Yes, state what happened.

Q. Tell us what occurred.

A. I know the fire started down at the firebox, and it came right up. The cab was just a mass of fire, and Mr. Gulick was fire all over, and he was trying to shut the engine off and fight fire, all at the same time, and I was down on the deck at the time, so I had some coal dirt there, slack, that I just covered the deck and put the fire out.

Q. What happened with reference to the stones coming in at about the time the bottles were thrown in?

A. They never stopped. They just kept on coming in.

Q. What is your best judgment, if you have a judgment, as to the number of stones that were thrown in there?

A. Well, I don't think I would try to guess. Some of the boys were good shots, some were poor. A lot of  
704 them hit the tender of the engine, and a lot of them come on through.

The Court: Read the question to him.

(Question read by reporter.)

The Court: In the cab.

A. Do you mean in the cab?

Q. Yes.

A. I would say anyhow a peck of them.

Q. What were the sizes of these stones that came in?

A. They varied; all sizes from half bricks on down.

Q. Did you notice these bottles after they were thrown in broken? What kind of bottles they were?

A. They were, I would say, half pint bottles. We picked up a lot of glass and the caps of them.

Q. Did both of them explode when they came in there?

A. Yes sir.

Q. What happened to the train after Mr. Gulick was set afire?

A. We slowed the train and stopped it, and got the fire put out, and went on our way.

Q. Was there a special agent by the name of James in there that day?

A. Yes, there was.

Q. What happened to him while this barrage was going on?

A. He stopped one of those stones, I presume.

Mr. Knoblock: Objection.

Q. What happened to his hand?

A. He got his hand cut and a big gash. They told me it took thirteen stitches to sew it up.

Mr. Knoblock: I object.

The Court: Objection sustained.

705 Q. What side of the engine was it you spoke of about Mr. Funk arranging to have the blow-off—

A. That was the left hand side.

Q. That was the side toward the river, and away from the highway?

A. That's right.

Q. Does the railroad run close to the highway at that point?

A. Very close.

Q. Is it on the same level, or lower than the highway?

A. It is lower. I would say it is about eight feet lower.

Q. As you went along there, can you tell how many men there were, approximately, throwing stones?

A. I would say there were twenty-five or thirty men out there in that gang.

Q. Were you able to recognize any of them?

A. No, sir, I don't know any of them.

Q. After the engine had been stopped, who took charge of the engine to move on?

A. I think Mr. Gulick took the engine and went on.

Q. Was Mr. Funk in the engine also?

A. Yes, sir.

Q. While this was going on, did you hear any revolver shots or gun shots?

A. No, I didn't.

Q. Did you see anybody in the cab having a gun or using it?

A. No, I didn't see anybody having the gun.

Q. Or displaying it?

A. No, sir.

Q. Was there any gun displayed in that cab that day?

A. Not that I know of.

706 Q. You were right there where you could see?

A. Yes, sir.

Q. Was the train molested again after this place about two thousand feet below Allied Mills?

A. No, sir.

Q. What became of the special agent?

A. We stopped the train this side of Mapleton, and he was taken out and put in a car and taken to the hospital, I guess.

Q. You didn't see him after that?

A. No, sir.

Q. Were you on extra 43 on December 31 running—

A. No, I wasn't on that train.

Q. You weren't on that train?

A. No.

Q. Were you on extra 41?

A. That's right.

Q. Tell us what occurred on that day, and where.

A. On extra 41 December 30 we got clear over here to this side of Sciota, and had some rocks thrown at us there, and we stopped at Sciota and did some switching and set a car, and just as we were leaving town we were again showered with rocks, and then I know we got rocked that evening at Taber crossing this side of Hamilton, and we may have been rocked once more, but I can't remember the place.

Q. You put up at Hamilton for the night?

A. That's right.

Q. Did you come back the next day?

A. Yes, we did.

Q. What, if anything, occurred on your way back?

707 A. Nothing happened until we got to Swords' coal yard coming back.

Q. Is that just east of the Illinois River?

A. Yes.

- Q. What occurred there?  
 A. They threw some rocks that night on the right hand side of the engine.  
 Q. Did you see who it was that threw them?  
 A. No, sir, I did not.  
 Q. Did you observe any men that were throwing them?  
 A. No, I didn't.  
 Q. What called your attention to the fact the rocks were being thrown?  
 A. You can hear them, all right.  
 Q. And you did that night?  
 A. That's right.  
 Mr. Elliott: You may cross examine.

*Cross-Examination by Mr. Knoblock.*

- Q. How long have you lived in East Peoria, Mr. McAvoy?  
 A. Off and on for the last fourteen years.  
 Q. You say all your life but fourteen years?  
 A. I said off and on the last fourteen years I have been there.  
 Q. How long have you been employed by the T. P. & W.?  
 A. I went to work for them December 30, 1941?  
 Q. That's right.  
 Q. Where had you been employed before that?  
 A. Working on construction work.  
 708 Q. Working for whom?  
 A. C. D. Wagstaff.  
 Q. Where is he located?  
 A. Evanston, Illinois.  
 Q. Evanston?  
 A. Evanston.  
 Q. Had you ever had any railroad experience before?  
 A. I worked on the railroad back in 1919.  
 Q. How long did you work on the railroad then?  
 A. I think I was at it about four months, if I remember right.  
 Q. What road did you work for?  
 A. I can't even get to that. It was out of Mason City, Iowa, and whether it was the Great Western or the Great Northern I don't know.  
 Q. Outside of that four months' experience, had you ever worked for any railroad?

A. That's right; I never had.

Q. On this day of December 30, you went out as a full-fledged fireman, is that right?

A. That's right.

Q. How much were you paid?

A. I was paid \$7.40 for the first hundred miles, and \$10.00 a day bonus.

Q. Did Mr. Best promise you that?

A. That's right.

Q. How long did he offer to pay you that bonus?

A. He didn't offer any time limit to it that I know of.

Q. On the date of January 2, 1942, you say you went on duty in the East Peoria yards about 6 A. M., is that right?

709 A. That's right.

Q. What was the name of that train, or what was it called?

A. That was the extra 41 west.

Q. Who was the engineer?

A. Omar Gulick.

Q. Who was the conductor?

A. Ed Taylor.

Q. Who?

A. Taylor.

Q. What is his first name?

A. Ed, I think.

Q. Do you know where he lives?

A. No, I don't know where he lives.

Q. You say you have been living in East Peoria off and on for the last fourteen years? Where have you lived in the last fourteen years outside of East Peoria?

A. I have lived in Peoria, I have lived in Macomb, and I have lived at Plymouth.

Q. Is that all?

A. Yes.

Q. How about Evanston?

A. I never lived there.

Q. You never lived there?

A. No, sir.

Q. You had an apprentice fireman on there by the name of O'Brien?

A. That's right.

Q. You were teaching him how to fire?

A. He was on there to make his student trip.



Q. You left the yards about when?

710 A. We are talking about January 2!

Q. January 2.

A. I think we left the yards about 7:20.

Q. And who all was in the cab of that locomotive outside of the men you have named here?

A. Well, there was Mr. Funk in that cab, Mr. Gulick, myself, Mr. O'Brien, and this man James that got his hand hurt.

Q. Anybody else?

A. There were two other men on there that I don't know either one of their names.

Q. How many?

A. Two.

Q. Isn't it a fact there were four special agents in there that morning?

A. There might have been, as far as I know.

Q. But you don't recall it?

A. I don't know their names.

Q. Did all those men carry guns?

A. I didn't see any guns.

Q. You never saw any guns?

A. That's right.

Q. You rode with them all the way from East Peoria to Hamilton, Illinois?

A. No, I think not. We lost Mr. James when he got his hand hurt at Mapleton.

Q. I think that is right, but the other three men went all the way?

A. I think one man was taken off the cab at Canton that day.

Q. Did the other two ride all the way through with you?

A. I think they did.

711 Q. Did you see them have any holsters?

A. I never noticed any guns.

Q. At this Star Model Brewery in Peoria, you didn't see anybody throw anything there, did you?

A. That's right.

Q. You don't know who threw anything? You didn't see them throw it?

A. I didn't see them throw it there. I saw plenty down below.

Q. I will get down there. You say you saw some men standing at the Star Model. How far—

A. At the crossing. I wouldn't say how far they were from the track.

Q. What is the distance, to your best judgment?

A. I wouldn't say they were over twenty-five or thirty feet from where the track was going—the train was going.

Q. You didn't—wouldn't recognize them now, and don't now, as having been former employees of the T. P. & W.?

A. No, I didn't.

Q. This object that you saw come in and strike Mr. Funk, how much would you say that would weigh?

A. Four pounds.

Q. When you got down to the M. & St. L. crossing, you say you saw some fellows out there, but they didn't do anything?

A. I didn't see them do anything. In fact, they didn't do anything at the engine.

Q. Isn't it a fact you thumbed your nose and shook your fist at these men at that point?

A. That is not true.

Q. That is not true?

A. No, it isn't.

712 Q. Mr. Gulick didn't do that, either?

A. Not that I know of.

Q. Down at the Allied Mills, did you see one of the special agents get down out of the cab of the engine there?

A. Well, I don't remember of anyone getting out of the cab. They could have done it very easy.

Q. You didn't see anyone go down there and pull his gun? Or pull his coat back and display his holster, and put his hand on his gun, did you?

A. No, I didn't.

Q. You didn't hear any conversation there, either?

A. That's right. I never heard a word.

Q. Not a word was said? About two thousand feet south of the Allied Mills, Funk was instructing whom concerning the blow-off cock?

A. O'Brien.

Q. And that engine had a blow-off cock on both the left and right sides, didn't it?

A. That's right.

Q. And the blow-off cocks were turned on, and then you noticed rocks start to fly, isn't that right?

A. There was plenty of rocks. I don't know whether

the blow cock was turned or not. He was telling Mr. O'Brien.

Q. It is your best judgment the blow cock was not turned off at any time?

Mr. Heyl: I object. He answered that.

The Court: He may answer. Do you know whether it was turned on or not?

A. I would say it was turned on.

713 The Court: Go ahead!

Q. Was it turned on on both sides?

A. No, sir.

Q. Which side was it turned on?

A. It would be on the left hand side of the engine.

Q. Just shortly after that blow-off cock was turned on, that is when you first noticed the rocks?

A. They came in there all at this same time.

Q. And when the blow-off cock is turned on, it expels and throws out quite a bit of hot water and steam, doesn't it?

A. I imagine it does.

Q. And anybody struck with that could be pretty badly burned, couldn't they?

A. I don't know whether it would scald anyone or not. I would think not unless they would be standing up next to it.

Q. It would be hot?

Mr. Heyl: I object. Lots of things are hot.

Mr. Knoblock: This water and steam.

The Court: He can answer. I would say to you it would be hot!

A. It wouldn't burn anybody unless they would be on the right-of-way of the railroad, I would say.

Q. After the rocks started coming, you saw a bottle thrown in there, is that right?

A. I saw the bottle when it hit in the boiler. I didn't see it thrown in.

Q. You didn't see anybody throw rocks or bottles?

A. Yes, I saw them throwing rocks that day.

Q. Did you know who they were?

714 A. I did not.

Q. You didn't know then, and you don't know now, do you?

A. That's right.

Q. Did you on that occasion, then, see any of these special agents draw their guns and start shooting?

A. No, I didn't.

Q. Did you see any of the special agents shoot through the curtain of the cab?

A. I did not.

Q. Did you see or smell any of the smoke coming from the powder explosion?

A. I did not.

Q. On this extra 41—what is that, east or west?—on December 30, 1941—

A. December when?

Q. December 30, 1941, is extra 41—

A. West.

Q. You say that there was rocks thrown at Sciota, Taber crossing, and you don't know who threw those?

A. That's right.

Q. You didn't see them thrown?

A. No, sir.

Q. And then on December 31, 1941, at Swords' coal yard you didn't see any rocks thrown there?

A. No.

Q. You didn't recognize anybody around there?

A. No.

Q. How many special agents did you have coming into Peoria that night?

715 A. I don't remember. I couldn't answer that.

Q. You had some, though, didn't you?

A. I think probably there were one. There might have been two.

Q. Was he armed?

A. Not that I know of.

Q. As these rocks come in there, who was sitting on the right side of the cab in front?

A. At which particular place?

Q. Two thousand feet below the Allied Mills.

A. Well, I don't know whether anybody was sitting or not. Mr. Gulick was there, but whether he was sitting or standing, I wouldn't swear to it.

Q. Who was behind him on his side?

A. That is where the special agent, James, was standing.

Q. Where were you at that time?

A. I was on the deck taking care of my engine.

Q. Where was Funk?

A. On the other side, instructing this man how to work the blow-off.

Q. That would be on the left side?

A. Yes.

Q. And the apprentice fireman was over there, too?

A. That's right.

Q. Where were the other three special agents?

A. Well, I think possibly—

Q. Do you know where they were?

A. Well, they were around in there. I don't know just particularly where they were at.

Q. Did everybody keep their post?

716 A. Well, I guess they did. They was all in the cab. None of them jumped out.

Q. Were they out in the gangway, these three special agents?

A. Well, they were all around in there. I don't know.

Q. The gangway is opposite the curtain, isn't it?

A. Well, it all depends on what you call the "gangway". I call the gangway from the firebox to the tender. It is all deck down there.

Q. Part of the gangway is opposite the curtain then?

Mr. Heyl: What do you mean by "gangway"?

Mr. Knoblock: He called it "gangway". You should ask him yourself.

The Court: Let's get away—

Q. Part of that gangway was opposite the curtain?

A. It runs from your boiler of your engine to your tender.

Q. Is part of the gangway opposite the curtain or not?

A. I guess it could be, yes.

Q. Who was the brakeman on the train that day?

A. Well, I know his face, but I can't call his name.

Mr. Knoblock: I think that's all.

The Court: Is that all? Call the next witness.

717 CARL JAMES, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Carl James.

Mr. Knoblock: I didn't hear it.

A. Carl James.

Q. Can't you speak louder?

A. Carl James.

Q. Where do you live?

A. Bushnell.

Q. What is your business or occupation?

A. Garage mechanic.

Q. How old are you?

A. Forty-one.

Q. How long have you lived in Bushnell?

A. About six years.

Q. Where did you live before that?

A. Tulsa, Oklahoma.

Q. Were you in the employ of the T. P. & W. Railroad the last week of December?

A. Yes, sir.

Q. This last year?

A. Yes, sir.

Q. When did you begin your employment with the T. P. & W.?

A. About two weeks ago.

Q. What day of the week? Do you recall, Mr. James?

718 A. Monday, I believe.

Q. That would be December 29, 1941?

A. Somewhere along there.

Q. Two weeks ago today?

A. About two weeks ago today.

Q. What trains did you travel on during the time that the strike was on, and before the restraining order was issued in this case?

A. Well, I don't know just when the restraining order was on.

Q. A week ago Saturday?

A. A week ago last Saturday?



Q. Yes. What trains were you operating before that?

A. I made two trips to Hamilton.

Q. On what days? Do you remember?

A. On Monday and Wednesday, I believe.

Q. Were you on the train that had the glass bottle incident down at Hollis?

A. Yes, sir.

Q. This side of Hollis?

A. Yes.

Q. That was on January 2, on Friday, is that right?

A. Right.

Q. That was the second train you were on?

A. That was the third train.

Q. And then you were on one what day? The 30th?

Mr. Knoblock: I think he should pick the train.

The Court: Yes, let him tell.

Q. Let's get down to this train on January 2, 1942. Where were you riding on that train?

A. In the caboose.

719 Q. And what position did you have on the train?

A. Guard.

Q. Special agent?

A. Special agent.

Q. And what happened after you left East Peoria, before you reached the place where this stoning took place?

A. Well, nothing in particular.

Q. When you got down to the American Milling, was there something there after switching had been completed? Did something happen there?

A. At the Allied Mills?

Q. At the Allied Mills.

A. Yes.

Q. What was it?

A. Well, as we started to leave there, we got about, oh, I would say—

Q. A little louder, please.

A. A quarter of a mile west of the switch, I started to get up behind the engineer, thought I would stand behind the engineer, and I reached over and got hold of the arm rest to steady myself, and about that time something hit my hand. I don't know what it was. I didn't see.

Q. Which hand?

A. My right hand.

Q. Where did you have your right hand?

A. On the arm rest.

Q. On the outside of the engine?

A. On the outside of the engine.

Q. On the engineer's side?

720 A. On the engineer's side.

Q. Just before you received that injury, did you see anyone along the road?

A. No, I was back in the cab.

Q. Did you see anyone standing on the highway, or near the right-of-way at that time?

A. No, I was back in the cab, and the curtains was drawn.

Q. Did you see anyone along there at any time?

A. There was some men at the switch when we were switching.

Q. Were you in the cab when this bottle was thrown?

A. I was in the cab when the fire broke out there. I didn't see what it was.

Q. You didn't see the bottle?

A. No.

Q. When was that with reference to the time you got your hand injured?

A. Just after.

Q. Just afterwards?

A. Just afterwards.

Q. What happened to your hand?

A. It broke it in seven places.

Q. Your right hand?

A. My right hand.

Q. Will you tell what the injuries are?

Mr. Knoblock: I object.

The Court: If he knows, he may tell.

A. I wouldn't know.

Q. Did you go to the hospital?

A. Canton Hospital; Graham Hospital.

721 Q. How long were you in the hospital as a result of that injury?

A. A day and a half.

Q. Who treated you?

A. Dr. Shallenberger.

Q. Is your hand in a splint now?

Mr. Knoblock: I object; immaterial.

The Court: What is the objection?

Mr. Knoblock: Immaterial; doesn't prove anything.

The Court: It is part of it. He says he is hurt, and was in the hospital.

Q. Will you show the court your hand?

The Court: I can see it. I think it is immaterial. You don't need to go into the particulars, but he was injured.

Q. Did you have any surgery performed on your hand as a result of this injury?

A. Yes.

Q. What?

A. They set my finger and hand, and sewed it up.

Q. How many stitches did they take?

A. Twelve.

Mr. Knoblock: Objection.

Q. What part of your hand is broken and in splints?

A. That finger broken (indicating), and six places here.

Q. Can't you tell what finger it is?

A. The middle finger.

Q. That is where the middle finger is?

A. Yes.

Q. Where did you leave that train that day?

722 A. At Mapleton, I believe.

Q. And were taken to Canton from that point in an automobile?

A. Yes.

Q. Did you use your gun that day in any manner?

A. No.

Q. Did you have it out of your pocket at any time?

A. No, sir.

Q. Did any of the men you saw on that train have any guns out of their pockets or in their hands?

A. No, sir, I didn't see any.

Q. Did you see or hear any shooting?

A. I heard him shooting.

Q. Where was that?

A. I couldn't tell. I was pretty busy with this hand.

Q. Was there anyone near you?

A. I couldn't say. There was so much noise and confusion—

Q. Did you see anyone on that train or any train you were on during this strike exhibiting a gun, or flourishing a gun, or using a gun?

A. No, sir.

Q. Did you at any time—

A. No, sir.

Q. —use a gun or have it outside in plain view—

A. No, sir.

Q. —when any of these incidents occurred?

A. No, sir, we had strict orders.

Q. What were your orders?

A. We had orders not to use them.

Q. Who gave you those orders?

723 A. Mr. Kipling.

Q. That was the chief special agent?

A. Chief special agent.

Q. Have you been able to work since this happened?

A. No, sir.

Q. Can you use your right arm?

A. I can use my arm, but not very well.

Q. I can't hear you.

A. Not very well.

The Court: Cross-examine.

*Cross-Examination by Mr. Knoblock.*

Q. What garage did you work at down at Bushnell, Mr. James, prior to taking employment with the T. P. & W.?

A. Madison.

Q. The name is just the Madison Garage?

A. Madison Garage.

Q. How long had you worked there?

A. Three years.

Q. What other employment had you had in Bushnell prior to this?

A. More garage work.

Q. Where at?

A. Ball Garage.

Q. What?

A. Ball Garage.

Q. What was your employment down in Tulsa, Oklahoma?

A. Oil field.

Q. How long were you in the oil fields?

724 A. About twenty years.

Q. How long had you known Kipling prior to your going to work for the T. P. & W.?

A. Oh, I would say five years.

Q. And how much pay were you offered here as a guard?

A. Hundred and fifty a month.

Q. And were you given any bonus on top of that?

A. Not that I know of.

Q. And what were you making down here at this garage in Bushnell?

Mr. Heyl: I object to that as immaterial.

The Court: Oh, he may answer.

A. \$25.00 a week.

Q. Who gave you the gun you carried on this date, January 2, 1942?

A. Mr. Kipling?

Q. Who?

A. Mr. Kipling?

Q. Did he furnish the bullets, too?

A. I think so.

Q. You had the gun on you that day?

A. Yes, sir.

Q. Where did you carry it?

A. In the holster.

Q. Right outside of your coat?

A. In the open.

Q. Outside?

A. Yes.

Q. And in plain view?

A. Yes.

Q. It wasn't hidden?

725 A. It was probably under my overcoat.

Q. But under your overcoat it was in plain view?

Mr. Heyl: I object. He answered.

The Court: Yes.

Q. Did you have your overcoat open this day?

A. I couldn't say. I don't remember.

Q. Did you ever have the gun out of the holster that day?

A. No, sir.

Q. What calibre gun was it?

A. 38, I believe.

Q. What kind of bullets did it have? Dum-dum bullets?

A. I never looked at it.

Q. They were snub-nosed bullets?

A. I couldn't say. I never looked at them.

Q. How many special agents were there in this cab on this particular day of January 2, 1942?

A. Four, I believe.

Q. Do you know who the other three were?

A. No, I don't.

Q. Did they all carry guns?

A. I couldn't say. I didn't see them.

Q. Have you ever had any experience using firearms before?

A. Yes, sir.

Q. Have you ever acted as a guard before?

A. No, sir.

Q. Have you ever acted as a special agent before?

A. No, sir.

Q. Had you ever had any police experience before?

A. Yes.

726 Q. Where?

A. Tulsa.

Q. How long were you on the Tulsa police force?

A. At one time about eight months.

Q. About what year was that?

A. 1928.

Q. Do you now, and did you on January 2, 1942, carry any commission to carry a gun?

A. Only special agent.

Q. And that was the authority that Kipling gave you, is that all? Just called you "special agent," and gave you a gun, is that right?

A. Yes, I suppose.

Q. You say you made two trips to Hamilton on Monday and Wednesday prior to the fact in question of January 2. Did you carry a gun on both of those occasions?

A. Yes.

Mr. Elliott: Objected to as immaterial.

The Court: He has answered.

Q. Did you have any occasion to use them on those two trips?

A. I don't think so.

Q. Nothing eventful happened on those two trips?

A. Oh, a few bricks thrown, something like that.

Q. Do you know where and when?

A. No, I couldn't say exactly.

Q. What?

A. I couldn't say exactly just where.

Q. Did you know the names of these other three special agents in there with you?

727 A. No, I don't. They were all strangers.

Q. Do you know where they came from?

A. One was from Bushnell.

Q. Who was that?

A. I believe his name was Kane.

Q. How long have you known him?



A. Oh, maybe a year.

Q. What was his work in Bushnell prior to going to work for the T. P. & W.?

A. I can't say. I just know him when I see him.

Q. You just know him to see him?

A. Just know him to see him.

Q. At the Allied Mills plant there on Bartonville road, do you recall one of your special agents getting out of the cab, and going down on the ground?

A. I didn't.

Q. Did you see Mr. Kipling order one of the men down there?

A. No, sir.

Q. Did you see one of the men go down there?

A. I don't remember. I know I didn't. I never did leave the engine.

Q. Did you see one of your guards pull his coat back, exhibit his gun, and put his hand on the butt of it?

A. No, sir.

Q. You never saw any violence at the Allied Mills?

A. No, sir.

Q. There was none there?

A. Not to my knowledge.

Q. You were there all the time?

728 A. I was in the cab of the engine.

Q. You were in the cab of the engine?

A. Yes.

Q. Did you see Engineer Gulick and McAvoy and some of the men in the cab shake their fists at the men on the side of the road, and say, "Hello, sucker"?

A. No, sir.

Q. You never saw them thumb their noses, or do anything?

A. No.

Q. As you went west of the Allied Mills for about a quarter of a mile, Mr. Funk was assisting O'Brien in letting or putting on the pop-off cock, wasn't he?

A. I couldn't say.

Q. Blow-off cock, I mean. Did you see that?

A. I don't remember whether he did or not.

Q. Did you hear it?

A. Not to my knowledge I don't remember hearing it.

Q. While you have ridden on these trains on these trips, have you ever heard the blow-off cock put on?

A. Yes, sir.

Q. It makes quite a noise, doesn't it?

A. Quite a noise, yes.

Q. Where this fracas occurred there about a quarter of a mile west of the Allied Mills, the two blow-off cocks had been turned on just prior to the first shower of rocks?

A. I couldn't say whether they were or not.

Q. You have knowledge about an engine sufficient to know when those blow-off cocks are turned on, anyone standing within several feet of that will get burned, or 729 the water is very hot? You know that?

Mr. Heyl: I want to object as not cross-examination. I asked him nothing about this blow-off cock.

The Court: If it is the same occurrence—but I think we can concede, I think, it would hurt a little.

Q. Do you know that?

A. I think that he did.

The Court: Go ahead! What's the next one?

Q. After the pop-off cocks or blow-off cocks were turned on, the rocks started coming in, is that right?

Mr. Heyl: I object to that.

A. I don't remember.

Mr. Heyl: He said he didn't remember.

The Court: Objection sustained.

Q. Who was on the right front side in the cab of this locomotive when these rocks come about a fourth of a mile west of Allied Mills?

A. The engineer.

Q. Who was behind him?

A. I don't think there was anyone.

Q. There was no one behind the engineer?

A. No, sir.

Q. What side of the cab was the engineer on?

A. Right side.

Q. At that time where was Mr. Funk?

A. I think he was down in the cab on the floor.

Q. On the floor?

730 A. Standing.

Q. You mean standing on the floor?

A. I think so.

Q. Where was apprentice fireman O'Brien?

A. I couldn't say.

Q. Did you recognize a man on the train by the name of McAvoy? Did you know a man on there by that name?

A. I don't believe I do.

Q. Who was the brakeman?

A. I couldn't say. They were all strangers to me.

Q. Where was Fireman O'Brien when this attack of stones came?

A. I couldn't say exactly.

Q. Where were the three other special agents than yourself at that time?

A. They were standing on the floor in front of me. I was back next to the tender after my hand was hit.

Q. They were back there near where the curtain was drawn?

A. They were in front of me.

Q. And by the curtain?

A. They was pretty well crowded in there. I didn't notice just where they were.

Q. And it's a fact, isn't it, that those agents started firing through that curtain on that occasion?

A. I couldn't say.

Q. You say you couldn't say?

A. I couldn't say.

Q. They might have been firing through it?

A. I heard some shots.

Mr. Heyl: I object to what they might have been  
731 doing.

The Court: Do you know anything about it?

A. I heard some shooting.

The Court: Is that all you know about the firing?

A. That's all.

The Court: Go ahead?

Q. Did you know that there were four other special agents on that train besides yourself and the ones in the cab?

Mr. Heyl: I object as already answered.

The Court: I think he answered. I am not sure. Did you know?

A. I did.

Q. Where were they located?

A. They were in the cab.

Q. That isn't what I asked you. I said besides the four in the cab, did you know there were other special agents?

A. No, I don't know how many there were on there.

Q. But you knew there were others?

A. No, I didn't.

Q. As you left the East Peoria yards, where were you riding in the train?

A. In the engine.

Q. Who was in charge of the special agents on this trip on the train?

A. Well, no one, I don't suppose. Mr. Kipling, I reckon.

Q. Kipling wasn't along. Did he place any of you men in charge?

A. No, sir, not me.

Q. Who met you in Mapleton?

A. I couldn't say what his name is. He is a special agent.

Q. When did you last see Kipling?

732 A. When?

Q. On this morning of January 2,

A. At his office.

Q. About what time?

A. I would say 8 o'clock.

Q. Was there any other guards there with you at the time?

A. Several.

Q. How many guards were there altogether at that time?

A. I would say there was five or six around there.

Mr. Knoblock: I think that's all.

The Court: Is that all with this witness?

Mr. Heyl: Just one question.

The Court: We will take a five minute recess, gentlemen.

(Recess.)

733 LELAND RUDDELL, called on behalf of the plaintiff, and having been first duly sworn, testified as follows, in answer to

*Direct Examination by Mr. Heyl.*

Q. What is your name?

A. Leland Ruddell.

Mr. Knoblock: What?

A. Leland Ruddell.

Mr. Knoblock: Leland Ruddell?

Q. Your last name, R-u-d-d-e-l-l?

A. Yes.

Q. And your middle initial is "H"?

A. Yes.

Q. And you live at Hamilton, Illinois?

A. Hamilton.

Q. What is your business or occupation?

A. Brakeman for the T. P. & W. Railroad Company.

Q. Were you on train 41 west January 2, 1942?

A. I was.

Q. And in what capacity were you serving on that train?

A. Brakeman.

Q. Front brakemna or rear brakeman?

A. Front brakeman.

Q. You call that the "head brakeman"?

A. The head brakeman.

Q. What time did your train leave that morning?

A. In the neighborhood of 7:40.

Q. Where were you riding upon that train?

A. On the engine.

734 Q. What happened between the Union Station and Hollis, before you reached Iowa Junction?

A. Got a few rocks thrown at us.

Mr. Knoblock: Where at, now?

Mr. Heyl: I am going to ask that next question now.

Q. Where did you receive these rocks?

A. Not being familiar down through the yards, I couldn't just exactly say.

Q. Do you remember reached the Allied Mills siding?

A. I do.

Q. Do you know where that is located?

A. Yes, sir.

Q. Did you see anybody there that you knew, outside of your train crew?

A. Well, nobody that I could recognize and swear to it.

Q. Did you see any men there that were formerly connected with the T. P. & W.?

A. I did.

Q. Where did you see them?

A. On the highway.

Q. And how many of them?

A. Oh, I wouldn't say exactly. I expect there was twenty or twenty-five at that point.

Q. Were you riding in the engine at any time when the occupants of the cab of the engine were stoned?

A. I was.

Q. Who was struck?

A. Ernie Funk.

735 Q. And did you see the man that threw that article at him?

A. I did not.

Q. Where did it strike Funk?

A. Right on the shoulder, as he explained it to me later.

Q. Did you see where it struck him?

A. I didn't see it. As he explained it to me, —

Mr. Knoblock: I move the testimony be stricken.

The Court: That part may.

Q. Where were you when he was struck?

A. In the left hand side of the engine.

Q. Did you hear anything?

A. Only the noise of the rocks hitting the engine.

Q. West of the Allied Mills switch, did something happen somewhere around two thousand feet west of that Allied Mills switch?

A. It did.

Q. Where were you at that time?

A. On the left hand side of the engine.

Q. What were you doing?

A. Standing up.

Q. Just tell the court what happened there in your presence.

A. Well, I was standing on the left hand side of the engine. About all I could see or hear was a few rocks coming, and was ducking. I could hear them hitting the engine.

Q. What else came in?

A. I couldn't see anyone in particular; that is, that I could recognize at first.

Q. Did you notice a number of people out on the highway to the right of the engine?

A. To some extent.

736 Q. About how many did you observe in number?

A. Oh, approximately thirty or thirty-five at that point.

Q. What were they doing?

A. Throwing rocks.

Q. Was there anything in addition to rocks that came into the cab of the locomotive?

A. There was.

Q. What was it?

A. Some inflammable fluid.

Q. What was it?

A. I suppose it was in a bottle.

Mr. Knoblock: Objection.

Q. You didn't see the bottle?

A. No, I didn't.



Q. Did you hear it?

A. I didn't.

Q. What happened?

A. All of a sudden it went up in flame.

Q. What did you do?

A. Tried to get the water hose to put it out.

Q. How much of a flame was there?

A. Quite a little flame.

Q. That doesn't tell us anything.

A. It got pretty hot.

Q. How much of it inside of the cab?

A. Most of the boiler head was on fire.

Q. Burning on the outside of the boiler head?

A. On the outside of the boiler head.

Q. What about the engineer?

737 A. He was all over fire.

Q. Did you notice anything about his face or body?

A. Well, I did, really.

Q. What did you notice?

A. I noticed his eyes were awfully red. He said they hurt him quite a bit.

Q. Did you find any bottle caps there?

A. I did.

Q. How many did you find?

A. Two, I believe.

Q. Did you find any broken bottles?

A. I did.

Q. What kind of bottles were they?

A. Glass bottles; looked like they might be—after they were broken looked like they might be half pint bottles.

Q. Whiskey bottles?

Mr. Knoblock: I object to the leading form.

The Court: Yes. Do you know what kind?

A. I know what one was, but not the other.

Q. What was that one?

A. It had a gin label on the bottle.

Q. Where was it?

A. On the deck of the engine.

Q. That is in the cab?

A. Down in the front.

Q. Did you see Special Agent James, the man that just testified?

A. I did.

Q. Where was he?

A. Standing on the right hand-side of the engine.

738 Q. Were you there when he was injured?

A. I was.

Q. What did you observe with reference to his hand?

A. I don't know as to how it was done.

Q. What did you see? Did you see his hand?

A. I saw his hand after it was over.

Q. What was the condition of his hand?

A. It was in pretty bad condition; had quite a hole in the back of his hand.

Q. Any blood there?

A. He was bleeding quite a bit.

Q. And do you know when he received that injury?

A. Not exactly, no.

Q. When was it that you saw his hand with reference to the throwing of the stones?

A. Well, right after it was over with, right after I saw his hand. Right after he got his glove off, then he showed his hand.

Q. After the bottles— After you found or saw the broken bottles, were there any stones thrown?

A. No, I didn't find the bottles until we arrived at Canton.

Q. But after the fire there were some stones thrown? After you saw the fire inside the cab?

A. I don't remember as there was. I was possibly trying to get the fire out.

Q. Did you hear any firearms?

A. I did not.

Q. The report of any firearms?

A. I did not.

Q. Either in the cab, or outside of the cab?

A. No, sir.

739 Q. Or on the road?

A. No, sir.

Q. Did you see any guns in the hands of the occupants of the cab?

A. I did not.

Q. Do you know whether or not these special agents were armed, from anything you saw?

A. Well, not in particular, no.

Q. Did you know that anyone was shot, or claimed to be shot?

A. Not until we arrived at Canton.

Q. Then you heard some rumor?

A. The special agent was telling us about it.

Q. You didn't see anybody shoot?

A. I did not.

Q. Or hear any shots?

A. I did not.

Q. Now, on the hard road crossing near Hollis, did you observe any automobile load of striking employees?

A. I did.

Q. Did you recognize anyone of them?

A. One.

Q. What is his name?

A. Arthur Brewster.

Q. Where were these men?

A. They was sitting in a car.

Q. Where were they?

A. At the crossing between Iowa Junction and the M. & St. L. crossing.

Q. I don't get that.

A. Between Iowa Junction and the M. & St. L. crossing.

740 Q. That is before you had this trouble down by the Allied Mills,—

A. Yes, sir.

Q. —is that right?

A. Yes, sir.

Q. How many men were in the car?

A. I wouldn't say as to how many. He was the only one I saw.

Q. Where was the automobile?

A. Sitting at the crossing.

Q. Did you later see that same automobile?

A. I don't recall as I did.

Q. About what time was it on that day, January 2, 1942, that this fire occurred in the cab of the engine?

A. Well, I would say it was anywhere between 9 and 10 o'clock.

Mr. Heyl: You may cross-examine.

*Cross-Examination by Mr. Knoblock.*

Q. When did you go to work for the T. P. & W., Mr. Ruddell?

A. December 30, '41, I believe.

Q. And are you one of the men that was offered a \$10.00 bonus over and above your regular pay?

A. I was.

Q. Did Mr. Best offer that to you?

A. No, sir.

Q. Who did?

A. Mr. Gifford, in the presence of Mr. Best.

Q. And what is your rate of pay as a brakeman?

A. 87½, I believe.

Q. And how long have you lived in Hamilton, Illinois?

A. Oh, around twenty years.

741 Q. And where had you had railroad experience before this time?

A. T. P. & W., and Wabash.

Q. Wabash and what else?

A. That's all.

Q. Were you employed by a railroad company just prior to your employment with the T. P. & W. this time?

A. Sir?

Q. Had you been working for a railroad company just prior to your employment by the T. P. & W. on December 30?

A. No, sir.

Q. What was your employment in Hamilton?

A. I worked at the Purity Oats at Keokuk, cereal mill.

Q. What company?

A. Purity Oats.

Q. What town?

A. Keokuk, Iowa.

Q. When did you last work for the T. P. & W.?

A. I couldn't say just exactly when. I think it was either in 1925 or 1926.

Q. What was the reason for your discharge?

• A. Well, Mr. Eckhart and I had a few words, and I just quit.

Q. What was your work for the T. P. & W. at the time you quit in 1925 or '26?

A. Brakeman.

Q. How many men were in the cab of this engine on January 2, 1942?

A. Nine, I believe.

Q. And that included you—who as the engineer?

A. Gulick, Funk and special agents. I don't know their names.

Q. How many of them?

742 A. Four, I believe.

Q. Did you see any of them carry any guns that day?

A. I did not.

Q. Did you see or hear any of them fire their guns that day?

A. I did not.

Q. Did you know they had guns?

A. No, sir.

Q. Where did the special agents get on the train?

A. The East Peoria yards.

Q. At the Iowa Junction or at the M. & St. L. crossing, did you see Gulick and McAvoy or anyone in the cab of the engine there thumb their noses at these employees along the road, or shake their fists at them?

A. I didn't.

Q. Did you hear any of them yell at them, "Sucker"?

A. I did not.

Q. Would you say they didn't do that?

A. No, I wouldn't say they didn't.

Q. When you got down to the switch track by the Allied Mills, how many cars were set there?

A. I believe we set out ten there that morning.

Q. Where were you when those cars were set out?

A. On the ground opening the switch, cut the cars out of the train, cut the engine off the train after we made the set-up.

Q. Who was working around there with you?

A. Conductor Taylor.

Q. Did you see one of the special agents get down out of the cab of the engine that morning?

A. Yes, sir.

743 Q. Did you see him walk over and pull his coat back, and put his hand on the gun?

A. I did not.

Q. Do you know that special agent's name?

A. I do not.

Q. Did you know any of the special agents' names in the cab?

A. Not until after that one got his hand hurt, and they said his name was James, that's all.

Q. Did you find out the names of any of the others?

A. I did not.

Q. Was he the one that got down out of the cab?

A. I don't think he did. I don't recall of him being down.

Q. When you got about two thousand feet west of the

Allied Mills, did you observe Funk assisting apprentice fireman O'Brien in opening the blow-off cock?

A. He was on the left side, and I suppose that's what he was doing. He was supposed to be showing those firemen different things.

Q. Do you know where the blow-off cock was on that engine?

A. I do.

Q. Any—That engine has a blow-off cock on both the right and left side?

A. It does.

Q. Just prior to having these rocks come, you noticed the blow-off cock turned on, didn't you?

A. Well, I wouldn't say as I did. Of course, that could have been dope, and I wouldn't have noticed it.

Q. How many rocks would you say were thrown there on that occasion? I recall you saying "a few rocks coming."

A. That was below the crossing?

744 Q. West of the Allied Mills about two thousand feet west a few rocks were coming, but you couldn't see anyone, and couldn't recognize anyone, is that right?

A. Yes.

Q. How many rocks were thrown?

A. I would say about four or five hundred a minute.

Q. How many minutes did that continue?

A. I wouldn't know; probably a couple of minutes, maybe.

Q. And somewhere in the neighborhood of eight hundred to a thousand rocks were thrown, is that right?

A. That's right.

The Court: A good deal like a hail, is that it?

A. Yes. If you would be out there ducking them, you would think so.

The Court: Go ahead, gentlemen.

Q. Did Mr. Gulick remain in the cab of the engine all the time?

A. He did.

Q. Did he finish the run of the engine that day?

A. Him and Mr. Funk together.

Q. None of you got out of the cab of the engine, did you?

A. I wouldn't say as to that, whether they did or not.

Q. But you didn't?



A. I didn't.

Q. Did any of those eight hundred or a thousand rocks hit you?

A. No, sir.

Q. When you saw Arthur Brewster there between the Iowa Junction and the M. & St. L. crossing, he was just sitting in the car, wasn't he?

A. Just sitting in the car.

Q. He wasn't making any threatening motions or gestures, or anything of that kind?

745 A. Not that I noticed.

Q. You never saw that car later, as far as you can recall?

A. Not as I recall.

Q. How many cars were there on that occasion?

A. Either three or four, I believe. I wouldn't say to be exact.

Q. At this point two thousand feet south of the Allied Mills you have described at that point, the curtains were drawn on the cab of the engine, weren't they?

A. They were.

Q. And the special agents were standing back by the curtain, weren't they?

A. I don't know exactly where they were standing, all of them. Part might have been.

Q. Where were you standing?

A. On the left side.

Q. Back or front?

A. In front; up in front.

Q. You didn't see anybody that you recognized throw anything there two thousand feet south of the Allied Mills, is that right?

A. I did not.

Mr. Knoblock: I think that's all.

*Redirect Examination by Mr. Heyl.*

Q. The rocks were coming from the right side?

A. Right side of the engine.

Mr. Heyl: That's all.

The Court: We will stop at this point.

Trial Adjourned at 5:30 o'clock P. M.

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of Volume I of the printed record, which together with Volume II constitutes the printed record, filed in this Court on the third day of July, 1942, in the following entitled cause:

Cause No. 7951.

Toledo, Peoria & Western Railroad;

*Plaintiff-Appellee,*

*vs.*

The Brotherhood of Railroad Trainmen, Enterprise Lodge  
No. 27, et al.,

*Defendants-Appellants,*

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, for the Seventh Circuit, at the City of Chicago, this 1st day of February, A. D. 1943.

Kenneth J. Carrick,

(Seal)

*Clerk of the United States Circuit Court  
of Appeals for the Seventh Circuit.*